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The Solicitors' Journal

VOL. LXXIX. **Saturday, November 30, 1935.** No. 48

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Current Topics.

Mr. Speaker.

THE Speakership of the House of Commons, to which Captain FITZROY has been re-elected, and whose great traditions he so worthily maintained during his previous tenure of the office, is one of the highest and most dignified to which a commoner can aspire in the world of politics. Going back as it does for many centuries, the office has had many distinguished holders, among whom lawyers will note with special interest the fact that a goodly number were members of the legal profession. At one time its tenure was often conjoined with that of some Government post, and more than once it was so conjoined with that of Solicitor-General, as in the case of COKE; but for nearly two centuries the office of Speaker has been a lonely splendour. The choice of Speaker once claimed on behalf of the Crown is now, and for long has been, exclusively that of the House of Commons, but still Mr. Speaker Elect "submits himself with all humility to His Majesty's gracious approbation," which is expressed through the lips of the Lord Chancellor in the House of Lords, and that done Mr. Speaker—no longer Mr. Speaker Elect—demands the "ancient and undoubted rights and privileges of the Commons," and these being granted he returns to the House of Commons completely endowed with all the attributes and powers attaching to the ancient office. Among the many duties falling to him of a legal nature are the issue of warrants for the committal of offenders against the privileges of the House, the issue of writs to fill vacancies in the constituencies, and it further falls to him to decide, for the purposes of the Parliament Act, 1911, whether a particular Bill is a Money Bill, and, if so, to certify it with the consequences detailed in the Act.

"May" as meaning "Must."

IN the paper entitled "Accurate Thought and Clear Expression," in his recently published volume, Mr. Justice MACKINNON discusses the draftsmanship of the Carriage of Goods by Sea Act, 1924, and points out that in one place—Art. IV, r. 2 (*q*), "the effect of the words used is so nonsensical that all the commentators suggest that 'or' must be read as 'and.' He is a loose thinker indeed to whom 'or' does mean 'and'." Unfortunately, this loose thinking and inexact expression is continually being illustrated by decisions in our statute law, as for example, in the recent case of *De Keyser* v. *British Railway Traffic & Electric Co.* [1935] W.N. 186, where the Divisional Court, in construing certain sections of the Customs Consolidation Act, 1876, held that the word "may" had to be construed "must," upon which one might well say, in the language of Mr. Justice MACKINNON, that "he is a loose thinker to whom 'may' does mean 'must.'" No doubt in the particular case the court, on the previous authorities, felt compelled to have recourse to this construction, but it is melancholy to reflect on the vast amount of litigation that has been quite unnecessarily occasioned by the failure of Parliament to state in terms which there was no gainsaying, whether the word "may" was to be used otherwise than in its strict grammatical sense as denoting permission. If the curious in such matters will turn to the late Mr. STROUD's useful "Judicial Dictionary" he will find no fewer than seven pages devoted to the word "may," the discussion of which is subdivided into cases where the word imposes (1) an obligatory duty, (2) a discretionary or enabling power, and to these are appended a further list which Mr. STROUD deals with under the heading "Undetermined." In the solid phalanx of legal members returned to the new House of Commons we shall hope that there may be many in whom the passion for accurate thought and clear expression will prevent the possibility in future legislation of "may" being translated as "must" or "shall."

Rating Empty Property: Revised Proposals.

EARLY last week the Parliamentary and Finance Committees of the London County Council submitted to the council recommendations for modification in some respects of the resolutions passed last May in pursuance of a policy to seek legislative powers to rate empty properties to the extent of one-fourth of the general rate. Briefly, the recommendations comprise the inclusion in the Bill of a clause exempting from "empty rate" the owner of any unoccupied property which it is intended within a period of two years to demolish or alter structurally to a substantial extent from the date of a notice served on the rating authority indicative of such intention together with the statement that it is not intended to permit such property to be occupied meanwhile. Exemptions from the same rate, not to exceed in the aggregate six months in any period of three years, are also contemplated where property is unoccupied by reason of (*a*) negotiations for sale or letting being unavoidably delayed (this does not apply to property which when last occupied was used for residential purposes unless it will not be used in whole or in part for those purposes), or (*b*) the difficulty in the case of an industrial hereditament of letting at a rent equal to the net annual value appearing in the valuation list. An industrial hereditament is one within the meaning of that term as used in the Rating and Valuation (Apportionment) Act, 1928. The Finance Committee recommended the elimination of the proposal that the rating authorities should have the powers and remedies of a mortgagee. This, it was pointed

out, might in many cases adversely affect the interests of persons not in any way directly concerned with the letting of the property and appeared to be open to criticism on other grounds also. "Having regard," it was said, "to the other methods of recovery available—namely, by summary procedure or by proceedings, including distress against the owner, or by distress against subsequent tenants—we consider that so much of the resolution as refers to this method should be rescinded."

The Principle Involved.

Some observations concerning the proposal are contained in a Memorandum recently submitted to the Ministry of Health by the Council of the Auctioneers' and Estate Agents' Institute of the United Kingdom. The principle of rating from the time of Elizabeth has, it is urged, provided that rates are a liability for which the occupier or inhabitant of the district concerned is responsible. There is no variation from this national principle in the assessment for local rates, and in those cases where property of any kind or class is empty, and where there is no beneficial occupation, no rates have been payable, because there is no person from whom the money can be demanded. The rating of empty property would, it is therefore contended, alter the whole of the principle and basis of rating, and "instead of rating individuals according to their 'ability to pay,' the proposal now to be submitted involves the suggestion that a person shall be rated for local rates in respect of something from which they are obtaining no income, and by reason of the fact that they possess a particular class of property, irrespective of the fact whether or no that property is productive or not." The substitution of a principle involving the rating of empty property for the principle now in operation is regarded as a matter of such far-reaching importance that any legislation to effect such a change should be national legislation, promoted after due consideration by the Government of the day, and should not be legislation submitted by a local authority, such as a county council of a limited area. The effects which the Institute considers would follow from such an innovation are dealt with at some length and the distinction between the proposals and the example provided by the City of London, which collects a rate on empty properties, is indicated. This general rate in the City amounts to about 2s. in the £ on the rateable value for the year, out of a total rateable value for general and consolidated rates of 9s. 6d. to 10s. in the £. In the metropolitan boroughs the general rate means the total amount of rates payable in respect of all services to be collected by the borough, whether for local or county purposes. The term "general rate" is not therefore considered a useful term to employ for comparison. In practice one-half the general rate upon empty properties in the City amounts to about 1s. in the £. In the metropolitan boroughs one-quarter of the general rate would amount to 3s. to 3s. 6d. in the £, and in some cases possibly more. Considerations of space preclude a fuller treatment of the subject. The main lines of the Memorandum have, however, been indicated.

Age and Street Accidents.

Commenting on road accident statistics in a recent issue, we drew attention to the large number of cases in which pedestrians were considered to have been mainly responsible. Figures recently issued by the Ministry of Transport relating to the ages of those killed in street accidents in London appear to point in the same direction. Thus, in the forty-three weeks to 19th October last, 262 pedestrians over fifty-five years of age were killed, 143 between the ages of ten and fifty-five, and 114 under ten. In the following week eight of the fourteen killed were over fifty-five, and of those five were over sixty-nine. It may be that the high percentage of older people in the foregoing figures is to some extent attributable to a lack of agility in escaping from an accident seen to be imminent, but it would appear that the principal cause is to be found in a lessened alertness and decreased powers of superficial observation which advancing age commonly bring. While it is not suggested for one moment that a motorist is not under a duty to take into consideration eventualities likely to arise from the behaviour of pedestrians of all ages, there is a degree of thoughtlessness which it is impossible to guard against, and the foregoing figures suggest that such is more likely to occur in those of middle-age and over.

The Housing Act, 1935, in Operation.

In a recent circular, No. 1507, addressed to county borough, borough, urban district and rural district councils, the Minister of Health has complied with the statutory obligations imposed upon him by the Housing Act, 1935, of seeing that there is no unnecessary delay in putting into operation the measures contained in the Act for abating overcrowding. The circular announces that the following dates have been fixed for the completion of the various stages in the process directed to the foregoing end :—For completing an inspection of the working class houses in the district of the local authority to ascertain the overcrowded houses—1st April, 1936 ; for preparing and submitting to the Minister a report of the inspection showing the result thereof and the number of new houses required in order to abate overcrowding in the district—1st June, 1936 ; for preparing and submitting to the Minister proposals for the provision of new houses required for the aforesaid purpose —1st August, 1936. It is intimated that these dates have been fixed after consultation with the Association of Local Authorities and that if circumstances arise which render it necessary for an individual local authority to apply for an extension of time for the discharge of one or other of the duties mentioned, the Minister will be ready to give sympathetic consideration to such an application on being informed of the special circumstances which render it necessary. Such application should, it is stated, be made at the earliest practicable stage.

Rules and Orders.

Section 11 of the Housing Act, 1935, enacts that regulations prescribing the duties to be performed by medical officers of health of boroughs and urban and rural districts, and by medical officers of health in London, made by the Minister of Health under s. 108 of the Local Government Act, 1933, and s. 108 of the Public Health (London) Act, 1891, respectively, shall include provisions for imposing on those officers a duty to furnish annually to the Minister particulars with respect to conditions in relation to overcrowding, and in particular to furnish to him particulars of any cases in which dwelling-houses in respect of which the local authority has taken steps for the abatement of overcrowding have again become overcrowded. In compliance with this requirement the Sanitary Officers (Outside London) Regulations, 1935 (S.R. & O. 1935, No. 1110) provides that medical officers of health of county districts, and the Sanitary Officers (London) Regulations, 1935 (S.R. & O. 1935, No. 111) provides that medical officers of health of the City of London and of the metropolitan boroughs, shall as one of their duties furnish to the Minister of Health in relation to their respective districts (or constituent districts) as soon as practicable after the 31st December in each year a report for the year ending on that date relating to overcrowding within the meaning of the Housing Act, 1935, and showing (*a*) the number of dwellings overcrowded at the end of the year, together with the number of families and the number of persons dwelling therein, (*b*) the number of new cases of overcrowding reported, (*c*) the number of cases of overcrowding relieved and the number of persons concerned, (*d*) particulars of any cases in which dwelling-houses in respect of which the local authority has taken steps for the abatement of overcrowding have again become overcrowded, and (*e*) any other particulars with respect to conditions in relation to overcrowding upon which they may consider it desirable to report or which the Minister may from time to time require. The Sanitary Officers (Outside

London) Regulations deal with a number of other matters: Part II, which relates to county medical officers of health, setting out the duties prescribed by the Minister under s. 103 (4) of the Local Government Act, 1933; Pts. III and IV, which relate to county district medical officers and sanitary inspectors respectively, containing regulations as to qualifications and duties under s. 105 of the same Act. In Pt. V the Minister reserves to himself a right to dispense with any of the requirements of these regulations. Each set of regulations comes into force on 1st January, 1936. Copies are obtainable at the Stationery Office, price 3d. and 1d. for No. 1110 and No. 1111 respectively.

Aircraft Third Party Insurance.

PROGRESS of the Bill which is shortly to be introduced to secure compulsory insurance of commercial aircraft against third-party risks and a limitation of the liability of aircraft owners in respect of such risks will be watched with interest. The latter will obviate the difficulty which at present exists in securing a policy providing for indemnity against unlimited amounts, while the position of the owner of property above the proposed statutory limit will not be seriously affected, it being comparatively easy for him to obtain a policy to cover himself against aircraft risks above such limit at a reasonable premium. The compulsory maximum for third-party claims is fixed by the Bill as drafted at £5,000 for aircraft of a loaded weight not exceeding 5,000 lb., the amount increasing by £1 for every pound of loaded weight up to £25,000, which is the maximum figure for craft of 25,000 lb. or over. The maxima proposed for gliders, balloons and airships are £1,000, £5,000 and £25,000, respectively. The insurance is to cover damage to persons or property on land or water caused during the take-off, flight or landing of an aeroplane, but it will not extend to damage to passengers, and the benefit of limitation of liability is to cease if the damage is the result of the wilful misconduct of the owner or default on the part of his servants amounting to wilful misconduct. A new feature it is proposed to introduce in relation to aircraft is a licence to fly which will be additional to the existing certificate of airworthiness, the latter being rendered optional when the insurance scheme is in force. The licence to fly will, it is proposed, be issued by the Air Ministry and be liable to be withheld or cancelled if the aeroplane to which it applies is not properly registered or is not insured. It is further provided that an insurance company shall not be liable for damage caused by an aeroplane flown at a time when the licence to fly is not in force. The provisions of the Bill are calculated to encourage civil flying by removing a difficulty present to the minds of the more thoughtful and more responsible aspirants to this form of activity and appears to solve an insurance problem with some ingenuity.

Promotion of Local Bills: New Regulations.

ATTENTION may be drawn to the regulations just issued by the Ministry of Health relating to the procedure to be followed when polls of local government electors are demanded in connection with the promotion of a Private Bill by a borough or urban district council. Section 255 (1) of the Local Government Act, 1933, provides that the promotion of a Bill by one of the councils above mentioned shall be subject to the approval of the local government electors, and that for this purpose the provisions contained in Sched. 9 to the Act with respect to meetings and polls of local government electors shall have effect. Paragraph 16 (1) of the Schedule enacts that the poll shall be taken in accordance with regulations made by the Minister upon whom it confers power to prescribe forms for requisitions, voting papers, notices and other documents under the Schedule, which forms, or forms to like effect, it is provided, shall be used. The new regulations replace the Borough Funds Acts (Polls) Order, 1903. They do not apply to polls on Private Bills promoted by Metropolitan borough councils. It may be noted that a proviso to sub-s. (1) excludes from the operation of s. 255, *supra*, a Bill promoted by the council of a borough if its sole purposes are to constitute the borough a county borough, or to extend the area of a county borough, and purposes incidental thereto. Copies of the regulations are obtainable from the Stationery Office, price 3d. net.

Recent Decisions.

IN *Re National Anti-Vivisection and Battersea General Hospital Charity: Battersea General Hospital* v. *Attorney-General* (*The Times*, 20th November), the court sanctioned a scheme whereby an institution founded as an anti-vivisection hospital and incorporated as a company was authorised to continue its existence as a general hospital free from all restrictions as to the employment of remedies obtained by making experiments on animals. It was intimated that the Attorney-General supported and approved the scheme and evidence was adduced to show that but for the abandonment of the foregoing principles the hospital would have to be wound up.

In *Raahe Osakeyhto* v. *Goddard* (*The Times*, 21st November), a case which raised a number of questions relating to the construction of the Uniform 1933 Contract (F.O.B. form), 1933, it was held that a buyer was entitled to reject goods which did not comply with the contract specification notwithstanding a clause to the effect that the buyer must not reject, but must be satisfied with an allowance; that delivery of goods complying with the contract mixed with goods which did not entitled the buyer to reject the whole consignment notwithstanding any trade custom to the contrary: Sale of Goods Act, 1893, s. 30; *North Western Rubber Co.* v. *Huttenbach* [1908] 2 K.B. 917, 922; and that a clause to the effect that each item of the contract was "to be considered a separate interest" had reference only to disputes arising as to quantities, and did not apply to a dispute as to quality.

In *Saxton* v. *Nicholson & Co. Ltd.* (*The Times*, 22nd November), it was held that a document which, providing for the sale of timber, mentioned prices, sizes and a number of other matters relating to the goods, was not a mere contract to make a contract, but, if the sample was approved, constituted a firm contract for the sale of a number of logs. The buyer complained that the samples sent were not of the contract dimensions, and the sellers thereupon refused to deliver further. It was held that the object of the sample was only to show quality, and damages were awarded for non-delivery. A claim for damages in respect of the sample not being in accordance with the contract also succeeded.

In *Re Homes for Inebriates Association; the Association* v. *Attorney-General* (p. 903 of this issue), FARWELL, J., making an order authorising distribution of the surplus assets of the applicant association among two other institutions having similar objects, intimated that it was unnecessary to decide whether the association was a charity or not, the memorandum of association providing that if the funds could not be applied for the benefit of its work, they might be given to other institutions having similar objects. The sole question was whether the latter had objects similar to those of the association and that the funds would be devoted thereto.

In *Schiaparelli (London) Ltd.* v. *Cezard* (*The Times*, 23rd November), it was held that a clause, to the effect that a cutter would not, if he voluntarily and of his own accord left the service of court dressmakers, enter the service of another house or company in London for six months, offended the rule that it must not be wider than necessary for the protection of the employers, and an application for an injunction to restrain breach of its conditions failed. It was intimated that, if the covenant had been one not to disclose secrets which the defendant had learnt while in the employment of the plaintiffs, different considerations would have applied.

The Definition of "Alongside."

In the construction of charter-parties, the transport of goods for the last few yards may cause more difficulty than the previous hundreds of miles of a voyage. In *Dalgleish Steam Shipping Co. Ltd.* v. *James Williamson & Son Ltd.* (1935), 79 Sol. J. 453, the plaintiffs were the owners of the s.s. "Roseworth." The charter-party provided that the said steamship should "proceed to Oporto, and there load a full and complete cargo of cork (which was to be taken from alongside at merchant's risk and expense) and, being so loaded, the vessel should proceed therewith to Heysham and there deliver the same in the manner customary at Heysham." As was usual at the latter port, the cargo was placed in railway wagons on the quay by a shore crane—an operation which was performed by the railway company, as the harbour authority. The defendants, who were indorsees of the bill of lading (incorporating the charter-party) disputed liability for half the cost of so landing the cargo. At Preston County Court, His Honour Judge Robert Peel, K.C., gave judgment for the plaintiffs, and his decision has been upheld by the Court of Appeal. Lord Justice Greer observed that the delivery of a cargo required the concurrent acts of both the shipowner and the receiver of the cargo. The defendants had relied upon the terms of the charter-party, but these necessarily contemplated a point in the process of discharge, at which the goods could be said to be "alongside." From that moment the consignees were responsible for moving the goods from the ship, in "the manner customary at Heysham." This implied delivery to the railway company, as the representative of the consignees, and the discharge was then undertaken on behalf of the consignees and the shipowners equally. The latter phrase had no bearing on the question of the cost of putting the goods into the wagons, once they were out of the ship, even though the railway company looked to the shipowners in the first instance for the whole cost. Lords Justices Slesser and Roche concurred in dismissing the appeal, with costs.

The respective duties of shipowner and consignee were defined in *Peterson* v. *Freebody & Co.* [1895] 2 Q.B. 294. The plaintiff, as owner of the ship "Magdalene," claimed eight days' demurrage in respect of the unloading of spars and poles at the Surrey Commercial Docks. The charter-party provided that the cargo was to be "taken from alongside at merchant's risk and expense, the ship to discharge over side in the river or dock into lighters or otherwise if required by consignees." The latter provided too few men, with the result that the crew had to help, in spite of which the lay days were exceeded. Mr. Justice Kennedy gave judgment for the plaintiff, and his decision was upheld by the Court of Appeal. Lord Esher, M.R., laid down that the shipowner must not only put the goods over the rail of his ship, but must put them in such a position that the consignee can begin to act on them. The moment the goods are put within reach of the consignee, however, he must take his part in the operation. Lords Justices Kay and A. L. Smith agreed.

A vessel may be of too deep a draught to approach close to the quay, and the position in such a case was considered in *The "Turid"* [1922] 1 A.C. 397. That steamer was chartered to load a cargo of deals at Soroka, and thence carry the same to Great Yarmouth, where she was to deliver "always afloat, the cargo to be taken from alongside the steamer at charterer's risk and expense as customary." The difficulty was that the "Turid" could not get nearer than twelve feet to the quay, and a wooden staging was erected (in accordance with the custom of the port) to bridge the gap. The shipowners paid £46 17s. for this, under protest, and then claimed that sum as damages for breach of the charter-party, or as money paid at the consignee's request. His Honour Judge Mulligan, at Great Yarmouth County Court, gave judgment for the plaintiffs. This decision was upheld by the Divisional Court—Lord Merrivale (then Duke, P.) and Mr. Justice Hill—on the ground that an alleged port custom, placing the cost on the shipowners, was inconsistent with the charter-party, which required the charterers to take the cargo from "alongside" the steamer. The judgment was further upheld by the Court of Appeal (Lord Sterndale, M.R., and Lord Justice Scrutton) and also by the House of Lords, viz., Viscount Birkenhead, L.C., and Lords Atkinson, Sumner and Buckmaster.

This decision was followed in *Rederi, Aktiebolaget Acolus* v. *W. N. Hillas & Co.* [1927] 96 L.J. K.B. 186, in which the same charter-party was used. The s.s. "Oresuud" had discharged timber at Hull, but her owners (the plaintiffs) had had to pay £127 5s. 9d. as the cost of placing the cargo on bogies. Mr. Justice Greer (as he then was) gave judgment for this amount, as the defendant charterers had not removed the cargo from "alongside" the steamer, and the plaintiffs had paid the stevedore's charges for taking the timber beyond the ship's rail. This judgment was affirmed by the Court of Appeal and the House of Lords, although the appellants contended that, as the staging at Hull was across land, the case was distinguishable from *The "Turid," supra*, in which the staging was across water. Viscount Cave, L.C., held that this made no difference, as in each case the cargo had to be taken from alongside the ship and carried for some distance.

The above cases show that "alongside" normally refers to or connotes contiguity. Strong evidence will therefore be required that (at any particular port) a custom has given the word a different meaning, e.g., delivery either into a lighter, or on to carts or railway trucks, or on some space beyond the ship's rails.

Transfer from New Procedure List to Commercial List.

The plaintiff's solicitor indorses on the writ "New Procedure." The defendant, however, thinks that the case is one for the Commercial List. Is the plaintiff entitled to choose his tribunal, or is the defendant entitled to have his case transferred?

There is a fundamental difference between the way in which an action appears in the two lists.

I. A plaintiff who desires his case to be entered on the New Procedure List marks his writ accordingly (Ord. xxxviiia, r. 2 (1)). If the case has not been so entered, the defendant may, in his notice of appearance, indicate his desire for the case to be transferred to that list, and thereupon it is so transferred (r. 11; Ord. xii, r. 17a). It is of course true that an action may be so transferred at the instance of a judge (Ord. xiv, r. 8 (c)). But primarily, a case comes into the New Procedure List at the instance of one of the parties.

If the plaintiff marks the writ, his solicitor has the quasi-judicial duty of certifying the fitness of the case for New Procedure (Ord. xxxviiia, r. 3). The order does not define the causes suitable—save that they are King's Bench actions (r. 1); that certain even of these—such as defamation, seduction, breach of promise of marriage—are excluded (r. 2 (a)); and that actions are excluded which are "unsuitable" by reason of "complexity or other [similar] circumstances" (r. 3).

II. On the other hand, a plaintiff who desires his case to be transferred to the Commercial List must apply to the judge in charge of that list. So may the defendant. But neither party has the right *of his own motion*—as in the case of New Procedure—to enter the case upon the Commercial List. This can only be done by order of the judge. The New Procedure List depends, in the first instance, upon the option of the parties; the Commercial List upon the order of the judge. In the one case, the action goes into the list with the writ; in the other case the action is "transferred," usually, upon summons for directions. (See Notice as to

Commercial Causes, 1895; Yearly Practice, 1936, pp. 42, 2090.)

There is no complete definition of a "commercial cause," and an appeal lies from an order transferring a case to that list.

A further point of difference is that whereas Ord. XXXVIIIA indicates *by exclusion* the type of action suitable for New Procedure, the Notice as to Commercial Causes indicates *by inclusion* the type of action suitable for the Commercial List:—

> "Commercial causes include causes arising out of the ordinary transactions of merchants and traders; amongst others, those relating to the construction of mercantile documents, export or import of merchandise, affreightment, insurance, banking and mercantile agency and mercantile usages." (s. 1.)

III. From this account of the differences between the two lists, the answer to the question proposed at the head of this article may now have become resolved.

The Court of Appeal gave a clear, decisive and reasoned answer in *Butcher Wetherly & Co. Limited* v. *Norman* [1934] 1 K.B. 475 (see also 78 SOL. J. 1 and 889): a leading case on the "Commercial List" which contains an account of the necessity for that list, and of its advantages.

An action against a Lloyd's underwriter on a policy of insurance was marked by the plaintiffs' solicitors for the New Procedure List. On a summons for directions, before Macnaghten, J., in Chambers, the defendant applied for an adjournment so that an application might be made to the judge in charge of the Commercial List to transfer the action to that list. Macnaghten, J., refused the application on the ground that the plaintiffs were entitled to choose their tribunal.

His order was reversed by the Court of Appeal: Scrutton, Greer, Slesser, L.JJ.

The last rule of Ord. XXXVIIIA, namely, r. 16, provides:—

> "Nothing in this Order shall affect the practice as regards the trial of causes in the Commercial List or the transfer of causes to or from the Commercial List."

It was held that the defendant was entitled to his transfer; and moreover, that in future cases a defendant should apply as soon as possible after an action has begun, for its transfer to the Commercial List, without waiting for the New Procedure summons for directions.

IV. In this case Scrutton, L.J., gave an interesting account, from his personal experience, of the origin and history of the Commercial List.

Strictly, there is no such court as the "Commercial Court"; but just as the Queen's Bench judges allotted revenue cases to a particular judge, so they allotted commercial cases to judges who were familiar with commercial matters. This step was taken because there had been much dissatisfaction in commercial circles as to the way in which some commercial cases had been handled. The first judges in charge of the new list were Lord Russell, C.J., Mathew and Collins, JJ. The list has worked very rapidly:—

> "I have known a writ being issued on a Monday and the case being heard on the Wednesday. The New Procedure List has not yet equalled that" (p. 479).

Scrutton, L.J., proceeded to explain the difference between the inception of the two lists:—

> "The Commercial List was established in order that commercial causes might be dealt with by judges specially conversant with mercantile matters: see *Baerlein* v. *Chartered Mercantile Bank* [1895] 2 Ch. 488. The New Procedure List has not been constituted in that way" (p. 480).

Underwriters desire their cases to be tried in the Commercial List. New Procedure is not applicable to a marine insurance action, for the underwriter need not defend himself until the plaintiff files an affidavit of ship papers. It was never intended by the New Procedure to withdraw from the Commercial List cases that previously would have been within its jurisdiction:—

> "A party in such a case is entitled to go at once to the judge in charge of the Commercial List without first obtaining the sanction of the judge in charge of the New Procedure List. Further, I think that an application for transfer ought to be made as soon as possible without waiting for the summons for directions before the judge in the New Procedure List" (p. 481).

Greer, L.J., pointed out that the New Procedure Rules were made with the object of giving litigants generally similar privileges, e.g., in the matter of fixing the date of trial and in cutting down interlocutories—as were accorded to commercial litigants. New Procedure has reduced the time between writ and trial and thereby many "unnecessary interlocutory applications" (p. 483).

In a short judgment, Slesser, L.J., made the very pertinent point that before solicitors indorse or certify an action as fit for New Procedure they should consider the question:—

> "Whether the action may or may not appropriately go to the Commercial List" (p. 484).

A right decision on this will avoid "conflict of tribunals"—with its concomitant "expense and delay."

Quod nota bene!

Company Law and Practice.

Claim of Debenture-holder's Receiver to Money paid by way of Fraudulent Preference.

THIS week I am proposing to serve up a somewhat mixed grill, if my readers will permit the application of such a metaphor to a subject which some of them may consider chiefly characterised by its dry bones. Two cases decided earlier in the year, but which have not, I think, been touched upon in this column, supply the main ingredients. The first of these is *In re Yagerphone Limited* [1935] 1 Ch. 392, which raised the interesting question of who, as between the liquidator of the company (on behalf of the general creditors) and the receiver appointed by a debenture-holder, was entitled to a sum of money recovered from a creditor who had been fraudulently preferred. The debenture-holder had on the 31st January appointed a receiver of the property comprised in his debenture, and on 31st March a resolution was passed for voluntary liquidation. A sum of money paid to a creditor of the company on 17th January was recovered by the liquidator by virtue of s. 265 of the Companies Act, 1929, and the receiver took out a summons in the liquidation for an order that this money should be paid to him. There was no authority precisely in point, though, as Bennett, J., pointed out, the two cases of *Ex parte Cooper*, L.R. 10 Ch. 510, and *Willmott* v. *London Celluloid Company*, 31 Ch. D. 425; 34 Ch. D. 147, establish that whether in bankruptcy or in the liquidation of a company a secured creditor has no right to enforce for his benefit the remedy which is given to a trustee in bankruptcy or the liquidator of the company of avoiding a payment or setting aside a transaction made or entered into with a view to preferring a creditor of the bankrupt or company in liquidation. The learned judge decided against the receiver on the ground that at the time of the crystallisation of the security contained in the debenture (which charged the company's undertaking and all its property, both present and future) the sum of money paid to the creditor was not the company's property. When it was paid by the company to the creditor it ceased to be the company's property, and at the time when the security crystallised it was not property in respect of which the company had even a contingent interest. He pointed out that the right to recover a sum of money from a creditor who has been preferred is conferred for the purpose of benefiting the general body of creditors, and the sum of money, when recovered, was a sum of money received by the liquidator impressed in his hands with a trust for those

creditors amongst whom he had to distribute the company's assets.

The point is a short one, but, as will be appreciated, one of considerable importance.

Costs of a Voluntary Liquidator where Compulsory Liquidation ensues.

The other case—*In re William Adler & Company Limited* [1935] 1 Ch. 138—raised the question of the costs to which a voluntary liquidator was entitled where the voluntary liquidation was followed by a compulsory order. Five days after the company had passed a resolution for voluntary winding up and a liquidator had been appointed a petition for a compulsory order was presented by a creditor, and the voluntary liquidator instructed his solicitors to oppose it, and considerable costs were so incurred. A compulsory order was eventually made, with the usual order as to costs, and the Official Receiver appointed liquidator. On the taxation of costs the registrar disallowed certain items, including items of costs incurred by the voluntary liquidator after the resolution for voluntary winding up, but before the petition was heard, including the costs of consultations by the liquidator and of obtaining counsel's opinion. A second bill of costs was then brought in by the voluntary liquidator, including therein items which had been disallowed on the previous taxation, but which the solicitor claimed to be allowed on a solicitor and client basis. Eve, J., and the Court of Appeal held that these costs were properly allowable on that basis.

Rule 192 (1) of the Companies (Winding Up) Rules, 1929, provides (*inter alia*) as follows: "The assets of a company in a winding up by the court, remaining after payment of the fees and expenses properly incurred in preserving, realising or getting in the assets, including where the company has previously commenced to be wound up voluntarily such remuneration, costs and expenses as the court may allow to a liquidator appointed in such voluntary winding up, shall, subject to any order of the court . . . be liable to the following payments, which shall be made in the following order of priority, namely: First, The taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the court . . ." It was argued in effect, that the voluntary liquidator having in part obtained and acted on the order as to costs made by the court at the hearing of the petition, could not then obtain costs under the earlier words of the rule: "Payment of the fees and expenses properly incurred in preserving, realising or getting in the assets," including the remuneration, costs and expenses allowed by the court to a voluntary liquidator. This was rejected by the Court of Appeal who held that the matter was one entirely for the discretion of the judge; and Slesser, L.J., said that "it may properly be found by the judge in an appropriate case that the costs of consultations of the liquidator during the voluntary winding up of the company and relating to the opposition to a petition for a compulsory winding up order before the compulsory order has been made and of what is done by way of attendances on counsel and in obtaining counsel's opinion, may properly be said to be payments of fees and expenses properly incurred in preserving the assets within the meaning of the earlier words in r. 192 (1)," and so be allowable to the voluntary liquidator.

The judgment of Eve, J., in this case contains a valuable résumé of the general position with regard to costs where a voluntary liquidation is followed by a compulsory order and I cannot do better than reproduce his words (pp. 141–2): "First there are costs which the company has incurred prior to the passing of any resolution or the filing of any petition for winding up. The individual claiming these costs is in the same position as any other creditor of the company, he has given the company the benefit of his advice, the company has not paid for it, and he must take steps in the winding up to recover in respect of those costs such dividend as is payable out of the assets. The next costs . . . are the costs of appearing on the petition, and the ordinary rule is to give the liquidator the costs of appearing on making the order, and if there is nothing more than that, the bill which the liquidator brings in is a bill which starts with the first step taken towards the winding up, as a rule the presentation of the petition, and as from the date of that he is entitled to be paid out of the assets, as between party and party, such costs as have been properly incurred. If between the date of the passing of a resolution for voluntary winding up and the filing of a petition subsequently presented for compulsory winding up costs have been incurred by the solicitor representing the company and its liquidator, according to well settled practice the solicitor is entitled to have those costs, so far as they are proper, taxed and paid, because by s. 175 of the Companies Act, 1929, the court is bound to treat the commencement of the winding up as the date when the voluntary resolution was passed; and a solicitor carrying in a bill in those circumstances is in the same position as is one who carries in a bill where there has been no voluntary winding up, but the presentation of the petition is the commencement of the winding up."

Two Corrections.

The final items of my mixed grill consist of two corrections—or should I describe them as "humble pie"? In an article appearing in the issue of this journal dated the 9th November, 1935, I stated that the Registrar of Companies will not register a memorandum subscribed by a corporation or firm unless there are also sufficient individual names. I have received information from more than one reliable source that this is no longer so and that it is the current practice of the Registrar to accept a subscription made by or on behalf of a company. So far as I know this is not stated in any of the text books and it is worth remembering.

The other correction relates to the concluding sentence in an article appearing in the issue of the 16th November entitled "Surtax on undistributed income of companies." I was there discussing s. 21 of the Finance Act, 1922, which empowers the Special Commissioners in appropriate cases to direct that where a company has not distributed a reasonable part of its income then for purposes of assessment to surtax the company's income shall be deemed to be the income of its members. Then s. 31 (4) of the Finance Act, 1927, provides that where a company to which s. 21 of the 1922 Act applies is being wound up, its income for the period from the end of its last financial year to the date of the winding-up order or resolution is (for the purposes of s. 21) to be deemed to be the income of that period available for distribution to its members. In dealing with the case of *H. Collier & Sons Ltd.* v. *Commissioners of Inland Revenue* [1933] 1 K.B. 488, I said that it would appear from that decision "that the whole of such income can be the subject-matter of a direction of the Commissioners under s. 21 of the 1922 Act, the limitation to a reasonable part of the income having no application to the income for a period ending on the date of a winding-up order or resolution." This, as a correspondent points out, is misleading as it suggests that a direction by the Commissioners under s. 21 can apply to the whole of the income only if a company is in liquidation: whereas, in fact, as I think appeared from the earlier part of the article, a direction properly made under s. 21 applies to the whole of the income in any case—whether the company is being wound up or not. What I was trying to express was that in a case to which s. 31 (4) of the 1927 Act applies, *Collier's Case* suggests that the consideration (which the Commissioners have to take into account under s. 21 of the 1922 Act) whether a reasonable part of the income has been distributed is irrelevant.

I am much obliged to the correspondents who have drawn my attention to these two points.

A Conveyancer's Diary.

Failure of general Power of Appointment. Devolution of Property subject to the Power.

THE question whether, where an appointment under a general power fails to take effect, the property, the subject of the appointment, devolves as in default of appointment, or as part of the testator's estate, most frequently arises when the general power of appointment has been exercised by a residuary or a general devise or bequest without any specific reference to the power in particular or to powers generally.

In this connection it is pertinent, in the first place, to refer to s. 27 of the Wills Act, 1837.

That section of the Wills Act provides that a general devise of the real estate of the testator or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate or any real estate to which such description shall extend (as the case may be) which he may have power to appoint in any manner he may think proper and shall operate as an execution of such power unless a contrary intention shall appear by the will; and, in like manner, a bequest of the personal estate of the testator or any bequest of personal property described in a general manner shall be construed to include any personal estate or any personal estate to which such description shall extend (as the case may be) which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power unless a contrary intention shall appear by the will.

The real point to be decided is whether the testator has indicated a sufficient intention to make the property the subject of the appointment his own for all purposes or only for the purposes of the particular appointment. That intention has been gathered in several cases from the fact that the testator has treated the property the subject of the power and his own property together as one mass, for example, where he has directed payment of debts out of both. Also, it appears that there is a distinction to be drawn between cases where the testator has devised or bequeathed the property to trustees in trust for beneficiaries or has given it directly to them.

In *Re Davies* (1871), L.R. 13 Eq. 163, an executrix by her will declared that all her just debts, funeral and testamentary expenses should be paid and discharged. She then gave "all the rest residue and remainder of my moneys in the funds and all my personal estate wheresoever and whatsoever of which I shall die possessed or have any title to or interest in" to certain persons in equal shares. The testatrix was the donee of a general testamentary power of appointment under the will of her husband and some of the persons to whom her residuary estate was given having predeceased her, it was held that the general residuary gift in her will did not operate to make the property the subject of the appointment part of her estate, but that the lapsed shares devolved upon the persons entitled in default of appointment.

I think that in some later cases the grounds of the decision in *Re Davies* have not been accurately stated. The actual reason for the decision in that case was that the gift of residue was not to trustees upon trust for the beneficiaries but to the beneficiaries direct. If the gift had been to trustees then, even though the beneficiaries failed, the gift to the trustees would have stood as an appointment to them and they would have held the property in trust for the next of kin of the testatrix.

In several cases it has been stated (contrary to the fact) that in *Re Davies* the testatrix dealt with her own property and the settled property, over which she had a power of appointment, separately. That was so in two cases to which I will refer presently.

Another important authority is *Re Boyd Kelly* v. *Boyd* [1897] 2 Ch. 232.

The facts in that case were that a testatrix who had a general power of appointment over a sum of £5,000, after reciting the power, bequeathed the said sum and also all the residue of her estate equally amongst eight persons by name and appointed an executor. By a codicil the testatrix gave various legacies out of her "own moneys" and by another codicil she referred to the fact that she had by her will given "a certain fund therein named" and also the residue of her estate to the said eight persons. The testatrix was possessed of considerable personal estate of her own. Two of the appointees died in the lifetime of the testatrix. It was held that the testatrix had not indicated a sufficient intention to make the £5,000 her own for all purposes and consequently that the two-eighths of the fund which lapsed went as in default of appointment and not as part of her undisposed of estate.

Romer, J., in that case said: "In the present state of the authorities the question I have to decide is by no means an easy one. The principle to be applied to all cases of this class is clear. I have to ascertain whether the donee of the power meant, by an exercise of it, to take the property dealt with out of the instrument containing the power for all purposes or only for the limited purpose of giving effect to the particular disposition expressed. The difficulty lies in the application of the principle." The learned judge followed *Re Davies*, and no doubt the case before him was similar to that of *Re Davies* in that the gift was direct to the beneficiaries without the intervention of trustees. But there was no justification for saying that the testatrix in *Re Davies* dealt separately with her own property and the property over which she had a power of appointment for, in fact, she did not mention the latter property at all.

The latest case is *Re Van der Byl* [1931] 1 Ch. 216.

A testator by his will dated in 1889, having appointed executors and trustees and bequeathed certain legacies, devised and bequeathed all the residue of his estate to trustees upon trust for sale and conversion, and after payment out of the proceeds of sale of his debts, funeral and testamentary expenses and legacies, to invest the balance and to stand possessed of the investments upon trust for all his children who should attain twenty-one or marry, in equal shares. In the case of his daughters' shares, they were to be held by the trustees upon trust to pay the income to each daughter during her life for her separate use, and after her death in trust for the children or remoter issue as she should by deed or will appoint, and in default of appointment, in trust for the person who would have been entitled thereto under the Statutes of Distribution if she had died a widow domiciled in England and intestate.

The testator died in 1890 leaving eight children.

One of the daughters, A.E.V.B., by her will dated in 1927 gave all her property subject to the payment of certain legacies to her sister, J.C.G., to be disposed of as she thought fit at her death. The will did not refer to the power of appointment given by the will of the testatrix's father or purport to exercise that power.

The will of A.E.V.B. was attested by the husband of J.C.G., and consequently the residuary gift in her favour failed.

Luxmore, J., held that the testatrix A.E.V.B. had shown an intention of taking the property subject to the power of appointment out of the estate of her father and making it her own, so that it passed as part of her own undisposed of estate.

His lordship referred to the rules of construction stated in "Farwell on Powers," 3rd ed., pp. 269 and 270, and particularly to the rule which lays it down that "If there be an appointment to A who dies before the testator" (i.e., the person making the appointment) "no inference can be drawn from the mere appointment by itself of an intention to make the property the testator's own for all purposes." *Re Davies* is

the authority given for that, and rightly, of course. Then the rule goes on: "But there may be other *indicia* such as treating the appointed and the testator's own property as one mass and charging the entirety with debts and expenses and appointing executors, which will enable the court so to hold."

His lordship was able to find in the *Van der Byl Case indicia* of that kind. The testatrix had, so the learned judge found, treated the whole, both her own property and the property subject to the appointment, as one mass for the purpose of payment of her debts and funeral and testamentary expenses and legacies.

The best plan, of course, to avoid any question is always in drafting a residuary devise or bequest to use the word "appoint" or, better still, the expression "or over which I have a general power of appointment by will." There can then be no doubt about the testator's intention.

Landlord and Tenant Notebook.

Choice of Remedies to Recover Possession.

When a tenant wrongfully holds over, various steps may be taken by the landlord to recover the property. In fact, there may be as many as four different weapons at his disposal, and there are always two; for if peaceable re-entry be not possible, even a forcible re-entry is civilly valid. The penal consequences may, however, be unpleasant; and in many circumstances a landlord may hesitate before even peaceably ejecting trespassing ex-tenants; local feeling, and sometimes the local N.S.P.C.C. inspector, are occasionally roused.

Extra, legal measures apart, the landlord may be able to institute proceedings in the police court under the Small Tenements Recovery Act, 1838. This remedy is, of course, very limited in scope, and when applicable the other three methods are also available. But it is a very expeditious remedy.

What I am most anxious to discuss, however, is the comparative merits of High Court and county court proceedings for possession; incidentally, I hope to dispel one or two rather common illusions.

A county court action for possession may be brought when neither annual rental nor annual value exceeds £100, and I have come across people who appear not to contemplate the possibility of a High Court action when the subject-matter permits of proceedings in the county court. The objections present in their minds are delay and expense.

Admittedly, in many cases the county court is a more suitable tribunal. The circumstance that the premises are far from London and that the claim is likely to be contested are factors which may weigh heavily in favour of a county court plaint. But when the ex-tenant is merely sitting tight till judgment, or perhaps till execution, the High Court appears to me to be far better organised to deal with him than the inferior tribunal.

First, in such a case there is available the summary remedy provided by a specially indorsed writ under Ord. 3, r. 6, driven home by an application under Ord. 14. This has been proved to be effective and speedy, Cynics will concede that it is normally more difficult for an unscrupulous defendant to find a plausible defence to a claim for recovery of land than to baulk the plaintiff entitled to a sum of money by virtue of a commercial contract. A useful review of the features of this procedure will be found in *Keating* v. *Mulcahy* [1926] I.R. 214.

The question of mesne profits can be enquired into after judgment on an application being made under Ord. 14, r. 7A (added in 1933).

Then as to costs. I believe that it was at one time thought that no costs were to be awarded a successful plaintiff in an action for the recovery of land, on that issue; I do not quite know the source of this idea, but it is said to have been finally disposed of by McCardie, J., in an unreported case in chambers. Certainly, the terms of Ord. 65 are wide enough to admit of costs being awarded and following the event in this as in any other case; and it may be observed that Ord. 47, r. 3, giving a successful plaintiff, whose judgment gives him land and costs, the option to issue a writ of execution plus a writ of possession or a combined instrument, impliedly recognises the right to costs.

What costs? It is, I believe, a too common fallacy to suppose that a successful plaintiff who sues for recovery in the High Court when he could have recovered possession in the county court is penalised in the matter of costs. While there is no decision directly in point, there is plenty of authority to illustrate the limitations of s. 11 of the County Courts Act, 1919, and to show that that section does not apply to actions for the recovery of land.

The important thing about that section, for present purposes, is that it strikes at him who in an action "founded on a contract," and him who in an action "founded on tort," recovers less than the specified sums.

One group of decisions has established that an action in which the claim is substantially for an injunction is outside the scope of the section. The leading case is *Keates* v. *Woodward* [1902] 1 K.B. 532, C.A., in which nominal damages were recovered and an injunction granted to restrain the defendant from using what he alleged to be a right of way. This decision overruled that of *St. John's College, Cambridge* v. *Pierrepoint* (1891), 61 L.J. Q.B. 19. It has since been approved in *Doherty* v. *Thompson* (1906), 94 L.T. 626, C.A., which is an instructive case. The parties were landlord and tenant, and the claim was for breach of a covenant against alterations. The breach was the removal of an oven and furnace, and the relief sought was damages plus an injunction, mandatory and otherwise. After pleadings closed the defendant reinstated the oven and furnace "under protest." The damages awarded was only £10. On the question of costs it was argued that the plaintiff's action had not been founded on a contract or on tort, but merely on the right to an injunction, and the court held that it was the issue of the writ which caused the defendant to reinstate the oven and that the action had never ceased to be founded on something else than a right to damages. It will be observed that the judgment uses more precise language than the argument; to contrast an action founded on a contract or a tort with a right to an injunction involves confusing rights with remedies; there is no right to an injunction till either a breach of contract or some other wrong has been committed. What matters is that damages should not be in the forefront; for though the word is not mentioned in the section, it is implied by the expression "recover" and the expressions denoting sums of money. Another example is *Deverell* v. *Milne* [1920] 2 Ch. 52; the defendant frustrated a claim for specific performance and an injunction by disposing of the subject-matter, but had to pay High Court costs on £25 damages.

Then there are cases arising out of actions for detinue, which are analogous to claims for recovery of land for present purposes. In *Trotter* v. *Windham* (1907), 23 T.L.R. 676, C.A., the plaintiff sued in the High Court for the return of a couple of motor-car seats or their value, and obtained judgment that he should have the return of the seats or £6 10s. their value. On the issue of costs the court held, applying *Eberle's Hotels and Restaurant Co.* v. *Jonas* (1887), 18 Q.B.D. 459, C.A., and following *Du Pasquier* v. *Cadbury, Jones & Co.* [1903] 1 K.B. 104, that under such a judgment the defendant, if he had the power, had not the right to defeat the specific order; he could not make the detained goods his by paying the amount ordered in the alternative; the option was the plaintiff's. Therefore, the action was not to recover damages in tort,

and the plaintiff was entitled to High Court costs. These, I may mention, taxed at £119 13s. 6d.

It is immaterial whether an action for the recovery of land be regarded as an action for tort or an action for breach of contract or both, or neither; it is not a claim for damages, so costs are on the High Court scale no matter what be the value of the premises recovered.

The above does not, of course, apply to property within the Rent, etc., Restrictions Acts, all claims respecting which are expressly within the jurisdiction of the county courts; "and, if a person takes proceedings under this Act in the High Court which he could have taken in the county court, he shall not be entitled to recover any costs": Increase of Rent., etc., Act, 1920, s. 17 (2).

Our County Court Letter.

THE REMUNERATION OF POTATO SALESMEN.

In the recent case of *Burrell* v. *Twell*, at Boston County Court, the claim was for £6 5s., being the balance of commission on the sale of potatoes between December, 1930, and April, 1931. The plaintiff's case was that he was to receive 1s. per ton on potatoes sold by him or to customers he introduced. Details of sales by the defendant to various customers were given, but the defendant's case was that the plaintiff had admittedly received commission from some of the purchasers, and could not claim remuneration from both parties to the transactions. Although the plaintiff had received seven different sums of £1 from the defendant, these were only *ex gratia* payments, and were not made in pursuance of any previous or succeeding contract. It was unusual for a farmer to employ an agent to sell potatoes, and the defendant had no need to do so. His Honour Judge Langman held that the plaintiff had received all the commission to which he was entitled. Judgment was therefore given for the defendant, with costs.

FARMER'S LIABILITY FOR VETERINARY TREATMENT.

In the recent case of *Meadowcroft* v. *Inchboard*, at Easingwold County Court, the claim was for £2 2s., being the fee paid by the plaintiff to a veterinary surgeon on behalf of the defendant. The latter had bought a cow in calf at the plaintiff's premises, where the cow was left to await transport. The cow calved before being moved, and the plaintiff proposed employing a veterinary surgeon to cleanse the cow. The defendant contended, however, that the cow had aborted, and he refused to take delivery. His manager nevertheless called in the veterinary surgeon, who certified that there had been no abortion, and cleansed the cow—otherwise she might have died. The defendant disputed liability to pay the expense incurred by the plaintiff, who had no authority to do so. The defendant also contended that, if he had thought it necessary to employ a veterinary surgeon, he would have employed his own. His Honour Judge Stewart held that the veterinary surgeon was rightly called in as the cleansing of the cow was a necessity. Judgment was therefore given for the plaintiff, with costs.

THE SCOPE OF DEMOLITION ORDERS.

In a recent case at Bury St. Edmunds County Court (*Garwood* v. *Bury St. Edmunds Corporation*) an appeal was heard against demolition orders in respect of Nos. 1, 2 and 3, Turkey-court. The case for the appellant was that a closing order had been made in 1928, before the appellant became the owner. In 1931, the appellant received permission to use the three cottages as a store, on his undertaking to adapt them for purposes other than human habitation. It was submitted that, as the undertaking had been given, and acted upon, the premises were taken out of the category of dwelling-houses, and were now beyond the scope of demolition orders. Evidence was given that an expenditure of £20 or £25 would repair the premises, as the structure was sound, and they were suitable for second-hand storage purposes. The respondents' case was that they were no longer willing to accept a continuance of the conditions under which the permission to use the premises had originally been given. No steps had been taken to adapt the premises, beyond allowing them to fall into further disrepair, and the appellant admittedly could not afford to spend the required minimum amount on repairs. After inspecting the premises, His Honour Judge Hildesley, K.C., held that the respondents had acted reasonably. The appeal was therefore dismissed, no order being made as to costs.

Obituary.

Mr. C. B. JOHNSON.

Mr. Charles Bernard Johnson, Barrister-at-Law, of King's Bench Walk, Temple, Associate for the North-Eastern Circuit, died in a nursing home in London, on Wednesday, 20th November, in his forty-eighth year. Mr. Johnson was called to the Bar by Gray's Inn in 1913.

Mr. W. G. WRANGHAM.

Mr. Walter George Wrangham, late Sub-Treasurer of the Inner Temple, died at Eastbourne, on Thursday, 21st November, at the age of sixty-three. Mr. Wrangham, who was educated at St. John's College, Cambridge, was called to the Bar by the Inner Temple in 1896. He was appointed Sub-Treasurer of his Inn in 1908.

Mr. C. L. DAVIES.

Mr. Crompton Llewelyn Davies, solicitor, a partner in the firm of Messrs. Coward, Chance & Co., of Mincing Lane, E.C., and St. James's-square, S.W., died in London, on Saturday, 23rd November, at the age of sixty-seven. Mr. Davies, who was educated at Marlborough and Trinity College, Cambridge, was admitted a solicitor in 1898. He served his articles with the firm then headed by Sir John Hollams, and was for several years a member of the firm of Messrs. Withers & Co. After a period as solicitor to the Post Office, he became a partner in the firm of Messrs. Coward, Chance & Co.

Mr. C. H. M. GRIFFITHS.

Mr. Cecil Hubert Morgan Griffiths, solicitor, a partner in the firm of Messrs. Morgan Griffiths, Son & Prosser, of Carmarthen, died in a nursing home at Ruthin Castle on Wednesday, 20th November, at the age of sixty. Mr. Griffiths was educated at Trinity College, Cambridge, and was admitted a solicitor in 1900. He was for twenty-five years Clerk to the Petty Sessional Divisions of Carmarthen County, St. Clears and Llanboidy, and Clerk to the Towry Fishery Board.

Mr. G. L. HASLEHURST.

Mr. George Lister Haslehurst, solicitor, of Lincoln, died on Thursday, 21st November, in his seventy-second year. Mr. Haslehurst, who was admitted a solicitor in 1886, was appointed Coroner for the South Lincoln District of Kesteven in 1924. He was for many years Clerk to the old Washingborough and Heighington Drainage Commissioners, and at the time of his death was Clerk to the Governors of the Spital Charity and the De Aston School Foundation.

Mr. A. N. SKELTON.

Mr. Archibald Noel Skelton, Parliamentary Under-Secretary of State for Scotland, died in an Edinburgh nursing home on Friday, 22nd November, at the age of fifty-five. Mr. Skelton, who was educated at Trinity College, Glenalmond, at Edinburgh University, and at Christ Church, Oxford, became a member of the Faculty of Advocates in 1906. He was elected as Conservative Member for the Scottish Universities at the recent General Election.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Mortgagee asking for Reduction of Debt—Right of Mortgagor to pay off whole without Notice.

Q. 3247. A mortgages his property to B to secure payment of the sum of £3,000 in the usual form. The mortgage has been running for some years when B suddenly requires A to reduce the principal outstanding. There is nothing in the mortgage deed which entitles B to call for a reduction of the principal money, and so A immediately tenders to B the whole £3,000 in repayment, but B refuses to accept it, alleging that A must either give six months' notice of intention to repay or six months' interest in lieu of notice. It is suggested that the action of B in requiring a reduction of the principal money enables A to forthwith repay the mortgage without notice. Who is correct ?

A. This appears to be quite a new point. The rule that a mortgagor not paying on the day mentioned in the covenant must give six months' notice or pay six months' interest was an equitable one, and the first cases which restricted the right to notice were to the effect that where the mortgagee had taken steps to enforce his security he could not require notice. Eventually it was laid down that if the mortgagee demanded his money the mortgagor could pay it at any time with interest to date (*Smith* v. *Smith* [1891] 3 Ch. 550 ; *Edmondson* v. *Copland* [1911] 2 Ch. 301). Although there is no authority, we do not think a request to reduce the principal would be held equivalent to a demand of payment of the whole ; the question might, of course, depend on how the request was worded, but, judging from the bare statement in the question, we give the opinion that A was not justified in saying to B "You must take the whole amount with interest to date."

L.P.A., 1925, s. 125—Whether Title good if Power not Filed.

Q. 3248. A conveyance of 1930 was executed under a power of attorney, which power of attorney was not filed pursuant to s. 125 of the L.P.A., 1925. The conveyance, however, contained an acknowledgment for the production of the power of attorney. The property has now been sold. Is the present purchaser's solicitor justified in certifying the title on behalf of the building society in spite of the fact that the power of attorney was never filed, or should he insist on the present vendor's solicitors now filing the power of attorney ?

A. The Act does not state the effect of failure to file the power, and it may well be that it is in no way invalidated thereby ; at the same time the section says that the power *must* (not merely may) be filed, and on that account it would be in our opinion imprudent to certify the title until the power has been filed.

Lease by Executors of Original Purchaser when Conveyance made Direct to a Sub-Purchaser—Effect.

Q. 3249. B contracted to purchase from A certain freehold property, and died before taking a conveyance. His executors agreed to grant a lease to C, and subsequently entered into a contract to sell (subject to the agreement for lease) to D at an enhanced price. The lease has been executed in duplicate by the executors and C, and the same are held as escrows pending completion of the sale to D. It now appears that the executors do not propose to take a separate conveyance from A, but to join in the conveyance to D from A. Will the lease to C be valid, and, if so, when should it be dated ? Your comments and suggestions would be appreciated, as it is desired to avoid any question being raised hereafter as to the title of the executors to grant the lease.

A. In view of the fact that under the suggested arrangement the executors will never have the fee simple the lease cannot (whenever dated and delivered) confer a legal estate for the term granted, and on that ground would be unsatisfactory. We take it the conveyance will be made expressly subject to the lease, and if that is so that both the executors and D would be estopped (and those claiming under them respectively) from denying the lease. If the transaction is carried out in the manner intended (which we cannot recommend) the lease and counterpart should be delivered and dated before the conveyance. It is suggested, however, that the lessee should insist upon his lease being granted to him by the holder of the legal estate in the fee simple ; this would require the property to be conveyed to the executors, leased, and then conveyed to D subject to the lease, or D (after taking his conveyance direct from A) to grant the lease.

Receiver in Lunacy.

Q. 3250. A patient in a mental institution has for a number of years been maintained by and at the expense of the county council responsible for the institution. Under a will the patient has become entitled to a sum of money which is less in amount than the cost of the patient's maintenance which is claimed by the county council. Apparently under s. 299, sub-s. (2), of the Lunacy Act, 1890, the trustees of the estate from which the money is derived may pay to the proper officer of the county council the total sum due to the patient, and a receipt given by such officer will be a sufficient discharge. If a receiver of the patient is now appointed to take the money due, can the Master in Lunacy make any directions regarding the use of the money on the patient's behalf other than the discharge of the maintenance claim by the county council ? The proposed receiver has in mind the removal of the patient from the institution to a mental nursing home for special treatment.

A. The removal of a patient from an institution (presumably under the poor law) to a private mental home would be within the power of the receiver, apart from any order of the court. *A fortiori*, the Master in Lunacy has power to give directions regarding the use of the money on the patient's behalf. See "Mills' and Poyser's Lunacy Practice" (1934), p. 40.

Landlord and Tenant.

Q. 3251. (*a*) A lease reserves a yearly rent to be paid by four equal quarterly payments (in advance for each quarter, if so demanded). What sort of a demand is necessary ?

(*b*) Does the appointment of a receiver by a debenture-holder (as distinct from an appointment by the court) prevent a landlord from exercising his power of distress ?

A. (*a*) Any demand will suffice, whether verbal or by writing. The demand may also be made by a duly authorised agent. The demand may be made to the lessee anywhere, i.e., it is not necessary to make it upon the demised premises, or between any particular hours or any particular day.

(*b*) An appointment of a receiver by a debenture-holder does not place the goods in the custody of the law, and therefore a landlord may distrain without the leave of the court.

To-day and Yesterday.

25 November.—The following sad little story was unfolded before a jury at the Guildhall, Westminster, on the 25th November, 1775: Elias Briton, Esq., of Fourtree Hill, Enfield, the defendant, was evidently a very high-handed person. One day as he was riding by the house of Amie Garnault, Esq., the plaintiff, the watch dog ran out and frightened his horse. That evening his youngest son and his coachman went to the plaintiff's house, and, on being admitted by the gate, fired repeatedly at the dog, killing it. "The jury after examining several very respectable witnesses who concurred in giving the deceased dog a most excellent character," awarded £50 damages.

26 November.—On the 26th November, 1866, Lord Chief Justice Erle bade farewell to the Bar. He was a very popular judge and the court was so excessively crowded that the Attorney-General, the Solicitor-General and the Queen's Advocate could hardly struggle in, even the places at the attornies' table being filled with Queen's Counsel. After the Attorney-General had paid a tribute to Erle's "learning, great experience of affairs, wise administration . . . simplicity and elevation of character," the Chief Justice replied with evident emotion.

27 November.—On Friday, the 27th November, 1874, Sir Joseph Napier presided for the last time in the Irish Court of Chancery.

28 November.—Here is a sample of eighteenth century police methods. On the 28th November, 1759, "four constables, convicted in May term for the abuse of their office in wantonly seizing and dragging Mrs. Williams, a gentlewoman of character, to prison and confining her a whole night, were brought from the King's Bench Prison to Westminster Hall to receive sentence; when, in consideration of their extreme poverty, the Court thought fit to remit all pecuniary punishment and ordered them to two months' further imprisonment."

29 November.—On the 29th November, 1851, William Smith was tried at the Old Bailey for murder. One evening he came home very drunk and during the night killed the child of the woman he was living with by repeatedly holding it by the legs and dashing it on the ground. The mother had not returned that night, being locked up for drunkenness. The ways of juries are past understanding. This jury, in finding the man guilty, recommended him to mercy on the ground of intoxication and also because if the woman had been at home the death would not have occurred. Maule, J., held out no hope of reprieve, but for no apparent reason the authorities commuted the death sentence.

30 November.—On the 30th November, 1783, Lord Mansfield tried at the Guildhall "two actions of infinite concern to inn-keepers." The plaintiffs were two travellers who had shared a room at an inn. In the morning, one of them had missed three guineas and the other thirteen and a half. Counsel for the inn-keeper laboured hard to show that it was either a conspiracy or that one man had robbed the other, but the Attorney-General on the other side "proved the reputation of the plaintiffs to be above that suspicion" and the jury gave them a verdict.

1 December.—Burke and Hare were not the only monsters of their kind. On the 1st December, 1831, John Bishop, Thomas Williams and James May were tried at the Old Bailey for the murder of a boy whose body they had afterwards attempted to sell at the dissecting room of King's College. Chief Justice Tindal summed up, and the jury found a verdict of guilty, which was received by an immense multitude outside with such loud and continued cheering that the windows had to be closed in order that the Recorder's voice might be heard passing sentence of death. The men afterwards confessed that they had drugged the boy with rum and laudanum and hung him head downwards in a well.

The Week's Personality.

Sir Joseph Napier had quite a varied judicial career. He was appointed Lord Chancellor of Ireland in February, 1858, to the delight of the clergy of the Church of Ireland, three hundred of whom joined to send him a letter of congratulation and a handsomely bound Bible—a very proper gift for one whom his contemporaries called "Holy Joe." He held the Great Seal for little more than a year, after which the fall of the administration of Lord Derby sent him into retirement, since it was found impossible to transfer him to the Judicial Committee of the Privy Council, owing to the limited terms of the Act which constituted it. When Lord Derby came into power again, Napier was passed over and Blackburn became Lord Chancellor. An attempt to solace the ex-Chancellor with a place in the Court of Appeal was frustrated by party intrigues which made a pretext of a slight deafness from which he suffered to oppose his appointment. In the following year, however, he was given a baronetcy and shortly afterwards was nominated to a vacancy on the Judicial Committee of the Privy Council, of which it was now possible for him to be a member. Finally, in February, 1874, Sir Joseph was chosen to act as Chief Commissioner when the Great Seal of Ireland was put into commission, but on the 27th November he sat for the last time, the sudden fatal illness of his son causing his resignation.

Our "Devil's Island."

When we read of the 350 convicts who sailed recently from France for the French penal settlements, we must not forget that it is less than eighty years since we abandoned transportation, and that we, too, have had our "Devil's Island"—Norfolk Island, 1,000 miles from Sydney. Had Lord Ellenborough, C.J., known anything about it, he would not have described transportation as "a summer excursion to a happier and better climate." Dreadful as were the convict conditions in New South Wales, Norfolk Island was six times worse, and men there would deliberately commit crimes so as to be sent back to Sydney to trial and execution. An eye-witness, who saw such a company in the dock, described them thus: "Of the group of men, none were over thirty-five, and had been but two or three years in Norfolk Island. Their sunken glazed eyes, deadly pale faces, hollow fleshless cheeks, and once manly limbs shrivelled and withered up by premature old age sent a thrill of horror through the spectators." Men on the island who had been condemned to death were known to weep bitterly at news of a reprieve and to thank God for execution.

The Lighter Side of Transportation.

But there might be a lighter side to transportation in New South Wales, especially for the forgers, pickpockets and swindlers who were not set to labour like agricultural workers, but qualified as gentlemen's servants and clerks. They led a loose, joyous life and, on liberation, often combined roguery and diligence to rise to luxury and opulence. Once the only means of obtaining a classical education in the colony was at the academy of a scholarly individual who had been transported for forgery. A convict might have been provident enough to transfer the spoils of a big coup to his wife, who would follow him out and apply to have him assigned to her as a servant. One such, on the refusal of the application, wrote to Sir Richard Bourke, the Governor, saying that he had discovered a new sort of wood specially adapted for casks and that he had called it "Bourke-wood." He begged to be assigned to his wife so that he might perfect his invention. The ruse succeeded, and he regained virtual liberty and easy circumstances, while the mythical "Bourke-wood" became a standing joke in the colony.

Reviews.

Gibson's Probate and Divorce. Twelfth Edition, 1935. By Arthur Weldon, Solicitor, Honours, 1881, H. Gibson Rivington, M.A. (Oxon), Scott Scholar, Clement's Inn, Daniel Rearden and John Mackrell Prizeman (1900), and L. Crispin Warmington, Solicitor, Honours, 1909. Royal 8vo. pp. xcviii and (with Index) 352. London: The "Law Notes" Publishing Offices. £1 1s. net.

While this is primarily intended for the use of candidates for The Law Society's Final Examination, it is sufficiently detailed and comprehensive to merit retention on the solicitor's bookshelves after he has received his practising certificate. The effect of recent decisions is concisely set out. For instance, the validity of the *Rose* v. *Rose* clause is rightly considered in the light of Lord Merrivale's recent statement in *L.* v. *L.* [1931] P. 63, and *Russell* v. *Russell* [1935] P. 39. Such very recent statutes as the Money Payments (Justices Procedure) Act, 1935, and the Law Reform (Married Women and Tortfeasors) Act, 1935, are adequately dealt with. Since the publication of the eleventh edition the law relating to probate has not been radically altered. Under s. 2 of the Administration of Justice Act, 1932, probate or administration may be granted even though the deceased left no estate, and the summons for directions in a probate action is now issued under Ord. XXX after the pleadings are closed. These changes as well as a few of the minor alterations in the death duties are covered in the present edition, which is a workmanlike, clear and thorough statement of the law on the subjects with which it deals.

Executorship Law and Accounts. By the late D. F. de l'Hoste Ranking, M.A., LL.D., Ernest Evan Spicer, F.C.A., and Ernest C. Pegler, F.C.A. Twelfth Edition, 1935. Edited by H. A. R. J. Wilson, F.C.A., F.S.A.A. Crown 4to. pp. xliv and (with Index) 399. London: H. F. L. (Publishers) Ltd. 15s. net.

The Rights and Duties of Liquidators, Trustees and Receivers. By the late D. F. de l'Hoste Ranking, M.A., LL.D., Ernest Evan Spicer, F.C.A., and Ernest C. Pegler, F.C.A. Nineteenth Edition, 1935. Edited by H. A. R. J. Wilson, F.C.A., F.S.A.A. Crown 4to. pp. xxxii and (with Index) 434. London: H. F. L. (Publishers) Ltd. 15s. net.

These two publications have passed through numerous editions. They are intended for students preparing for the Intermediate and Final Examinations of the Institute of Chartered Accountants, and of the Society of Incorporated Accountants and Auditors. Each of them deals very fully and effectively with the administrative side of the law in regard to each subject. Students who master the contents of these volumes, and other readers who assimilate the principles enumerated therein, should be able to do creditable work in any examination relating to these subjects, and afterwards should be able to apply the principles in the practice of professional life. They can hardly be regarded as legal textbooks, but they are volumes which might very well find a place in the rooms of lawyers who are concerned in the administration of estates as a general guide to practice and as an easy means of reference to leading cases in each branch to which there is abundant reference in both volumes.

The Effect of an Unconstitutional Statute. By Oliver P. Field, M.A., LL.B., S.J.D., of the University of Minnesota, Author of "Cases and Authorities on Constitutional Law." 1935. Royal 8vo. pp. xi and (with Index) 355. London: Humphry Milford, Oxford University Press. 22s. 6d. net.

This is a very learned work by a distinguished American constitutional lawyer, and it deals with a subject which is obviously of universal legal interest in the United States. To the English lawyer it offers material for reflection and comparison that in these changing times may well be carefully pondered; and in particular the chapter on "Judicial review as an instrument of Government" should prove of especial interest. The author deals naturally from the point of view of what happens in the West—with defects in the operation of judicial review and shows how over-representation of the legal profession in legislative bodies has been responsible for no small amount of unsatisfactory draftsmanship. We are not sure that in our own House of Commons some of the energy of the 25 per cent. of lawyer members (representing both branches of the profession) might not be profitably devoted to the clearing of statutes from much of the dubious phraseology characteristic of that official draftsmanship of which so many complaints are to be heard. However that may be, there is much in this volume that is of interest to the student of public affairs; and on *res judicata* and *stare decisis* it provides abundant opportunities for discussion. The book, of course, offers a great deal of opening for contrasting the American legal and constitutional systems with our own; and the chapter on the recovery of unconstitutional taxes shows that in the United States the recovery of anything from the taxing authorities is a labour compared with which recovery of overpaid income tax in England is a pleasurable recreation.

Books Received.

Diary for Lawyers for 1936. Forty-fourth Edition. Edited by Philip Clark, of the Central Office, Royal Courts of Justice. London: Sweet & Maxwell, Ltd. 6s. 6d. net.

A Handbook on Wills. By A. H. Cosway. Second Edition, 1935. Crown 8vo. pp. ix and (with Index) 111. London: Sir Isaac Pitman & Sons, Limited. 2s. 6d. net.

The Parliament House Book, 1935-36. One Hundred and Eleventh Publication. Edinburgh: W. Green & Son, Ltd. 21s. net.

The Housing Acts, 1899 to 1935. By Arthur Henderson, B.A., LL.B. (Cantab.), of the Middle Temple and of the North-Eastern Circuit, Barrister-at-Law, and Leslie Maddock, B.A. (Oxon), of the Inner Temple and of the Midland Circuit, Barrister-at-Law. 1935. Demy 8vo. pp. xix and (with Index) 604. London: Eyre and Spottiswoode (Publishers), Ltd. 30s. net.

The Housing Act, 1935. By The Hon. Dougall Meston, of Lincoln's Inn, Barrister-at-Law. 1935. Royal 8vo. pp. l and (with Index) 144. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 7s. 6d. net.

Sir Ernest Wild, K.C. By Robert J. Blackham, Barrister-at-Law, an Under-Sheriff, City of London. 1935. Demy 8vo. pp. (with Index) 271. London: Rich & Cowan, Ltd. 15s. net.

Truth Christmas Number, 1935. London: Truth Publishing Co., Ltd. Price 1s. 6d.

The Lawyer's Companion and Diary, 1936. Ninetieth Annual Issue. Edited by Morton F. Parish. London: Stevens & Sons, Ltd.; Shaw & Sons, Ltd. Prices from 5s. to 13s.

The Law as to Gaming, Betting and Lotteries. By Alfred Fellows, B.A. (Cantab.), of Lincoln's Inn, Barrister-at-Law. 1935. Demy 8vo. pp. xxvii and (with Index) 203. London, Liverpool, Birmingham and Glasgow: The Solicitors' Law Stationery Society, Ltd. 15s. net.

The Journal of the Society of Public Teachers of Law, 1935. Edited by H. F. Jolowicz, M.A., LL.D. London. Butterworth & Co. (Publishers), Ltd. Price 3s. 6d.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

THE LAW OF PROPERTY ACTS, 1925.

By A. F. TOPHAM, Esq., K.C.

A Verbatim Report of the Seventh of a Series of Lectures Delivered to The Solicitors' Managing Clerks' Association

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Mr. Francis Taylor (Vice-President): Gentlemen, as one of the Vice-Presidents of the Solicitors' Managing Clerks' Association, I have been asked by our President, Mr. Vere, to express his regret at his inability to be here to-night. Unfortunately he has been called away on urgent business for his firm, which necessitated his leaving London late this afternoon.

I have, before the lecture commences, to remind you that there is a lecture next week, on Friday, 29th November, in the Gray's Inn Hall. The lecturer is Mr. D. Maxwell Fyfe, K.C., M.P., and the subject will be "Recent changes in the law affecting married women." The chair will be taken by the Right Hon. Lord Atkin. It should prove an extremely interesting lecture, and tickets will be available at the door free of charge after this lecture for anyone in the hall who would like to take one.

I have now much pleasure in asking Mr. Topham to deliver his seventh lecture.

Mr. Topham: Mr. Vice-President and Gentlemen, I want to say this to you about questions that I have been asked relating to the lectures. I have received rather a lot of them lately. Many of them raise very interesting points, some of them rather difficult ones, and I find, in looking at the syllabus, that unless I am careful I shall find that if I spend too much time in answering questions raising more or less subsidiary points, I may not be able to get through the main points of the lectures. So I think, for the moment, I will go on dealing with the syllabus of the lectures, and then see how much time I have got left to deal with the specific questions which have been put.

In my last lecture, in dealing with a certain Act amending the Law of Property Act, I gave the wrong date. I ought to have said the amending Act of 1929, but I gave the date as 1928. The mistake was due to the fact that I had pinned a print of the Bill to my book, and at the time it was only a Bill, and the date was altered afterwards. I should have said 1929. That has been corrected in the report of the lecture which will appear in The Solicitors Journal.

In my last lecture I was dealing with the question of covenants relating to land, and I endeavoured to state a summary of the decisions as regards the position of the benefits of these covenants and the liabilities under the covenants. I was dealing on the last occasion with restrictive covenants, and now I want to say a word or two about positive covenants —covenants which involve payment of money. There, as you know, the general rule is that a positive covenant to do something, such as to repair a road, or repair buildings, does not bind an assignee of the land which was the subject of the covenant even where he takes with notice. At first sight you might think that a certain section of the Law of Property Act, s. 79, has altered that rule, because the section says this: "A covenant relating to any land of a covenantor"—that is the land of the person who is burdened by the covenant—"shall . . . be deemed to be made by the covenantor on behalf of himself his successors in title. This sub-section extends to a covenant to do some act relating to the land, notwithstanding that the subject-matter may not be in existence . . ." At first sight you might think, therefore, that when a covenantor enters into a covenant relating to land it shall pass to and bind his successors in title, even though it is a covenant to do some act relating to land. However, the accepted view on that, though I do not know there has ever been a decision, is that that section does not alter the general rule that I have mentioned, that a positive covenant is not binding on a purchaser of the land even with notice. I think it is the accepted view that that provision about its extending to a covenant to do some act notwithstanding that the subject-matter may not be in existence is only intended to apply to a covenant in a lease, the burden of which passes on the assignment of the lease, and is meant to overrule the decision in the old *Spencer's Case* (1583), 5 Co. Rep. 16a, under which it was held that a tenant, a lessee, was not bound by a positive covenant to do repairs unless the lessee had covenanted that he and his assigns would do the act. Accordingly, it is still a very difficult thing to burden land with a positive covenant to do repairs in such a way that you can enforce that covenant against everybody who purchases the land afterwards. The sort of case you come across is where there is a building estate, and before the roads are taken over by the local authority the vendor wants to bind everybody who purchases a plot of land to pay his proportion of the road-making charges, the vendor, being a builder or somebody of that kind, proposing to keep the roads in repair and to charge the various landowners with their proper proportion. If you do that and make it a covenant as far as you can binding each separate piece of land, then, if one of the purchasers of a plot sells his plot to another even with notice, the sub-purchaser of that plot is not bound by the covenant. There are ways in which you could make such a roadmaking charge a legal charge on the land. You might fix an annual charge on the land which you think will be sufficient to cover the charges, and make that a legal charge so that it binds any person who takes over, whether with notice or not. But, on the other hand, you would have to make rather elaborate provision for reducing the charge if the whole sum was not required, and for putting an end to it on notice; or again, you might have a charge and make it an equitable charge, and register it for all sums which may from time to time be payable. That, I think, would work all right, but you must remember in that case also, as in the case I gave the other day, to be careful to confine the operation of that charge within the perpetuity rule. It makes it, therefore, a rather complicated provision, and I think most vendors who are going to lay out and develop an estate would rather hesitate to encumber every plot with such a burdensome-looking covenant; but remember, you cannot bind the successive purchasers unless you do something of that kind.

The next subject I come to is registration of land charges under the Land Charges Act. Rather a surprising decision was given in respect of those charges. Section 198 of the Act provides this: "The registration of any matter under the Land Charges Act shall be deemed to constitute actual notice of such matter to all persons and for all purposes connected with the land as from the date of registration or other prescribed date." I think there is no doubt about it that the framers of the statute expected that some rule-making authority would prescribe some date as from which persons who are dealing with land would be deemed to have actual notice. For instance, you might have "Provided that a purchaser shall be deemed to have notice as from the time when he ought to have made a search," or something of that kind. But the rule-making authority was kept very busy for some little time after the passing of the Acts of 1925, and they either neglected or declined to make any rule on the subject, with the result that that section runs in this way: "Any

matter entered on the register is deemed to constitute *actual* notice to all persons as from the date of registration." So that, according to the statute, all of us here have actual notice of every entry which has been put on the Land Charges Register—actual notice. That is a rather surprising thing, to begin with, and when you come to apply it in practice it has really rather curious results. They are exemplified in the case of *Re Forsey and Hollebone's Contract* [1927] 2 Ch. 379; 71 Sol. J. 823. In that case the purchaser agreed to buy certain land free from incumbrances. As a matter of fact, at the time of the contract the land was subject to a certain scheme under a town planning Act, and that scheme had been registered as a local land charge under the Land Charges Act. The question which arose was this: the purchaser said she had agreed to buy the land free from incumbrances, and now she found on investigating the title that a town planning scheme had come into force, or been made, and that was an incumbrance on her land because it restricted the way in which she could deal with it. But Mr. Justice Eve held that she could not complain, because at the time she entered into her contract she must be deemed to have had notice of this charge, because it was registered. At that time it had not occurred to anybody that they ought to search the register before they entered into the contract, and it was accordingly held that she could not raise the point because she had notice of it at the time she entered into the contract. That case went to the Court of Appeal, and the argument put before the Court of Appeal was this, that even actual notice under a statute which you are deemed to have is not really the same thing as knowledge, and if you are going to say that a purchaser must be deemed to have waived some incumbrance because he knew all about it, you may imply a waiver of something which he knew, but you could hardly imply that he waived something he knew nothing about, even though the statute said he should be deemed to have actual notice of it. That argument, I think, was carrying some weight with the Court of Appeal, but the point was not decided, the case being decided against the purchaser on another ground. It turned out that when this town planning scheme was looked into very carefully it did not really place very much greater restrictions (or so the Court of Appeal held) than the ordinary bye-laws of the district which she must be taken to have known. The result is that you have got a decision in the court of first instance that everybody is deemed to have actual notice of everything entered on the charges register as from the date of registration; and therefore, when you are entering into a contract, or your client is entering into a contract, to purchase land, it is advisable in these days, if you are going to be really cautious, to look at the register and search the register of land charges as far as you can before entering into the contract, or to put in some express provision under which you shall be at liberty to raise objections in respect of any land charges of which you know nothing at the moment, but of which you are deemed to have actual notice. I have seen such a clause put in. I do not know whether that would be held to be effective; I do not see why it should not.

The same learned judge who decided that a person had actual notice did not carry his decision to its full logical result in the case of *Coles* v. *White City (Manchester) Greyhound Association* (1929), 45 T.L.R. 230. That was a case where the company issued a prospectus; they were going to form a greyhound racing course, and there was in fact a town planning scheme under which the local authority might have taken the land and given them no compensation at all for the destruction of this greyhound racing course if it had been constructed; and some persons claimed to get their money back on the footing that there had been a misrepresentation or non-disclosure of a material matter. The defence put up by the company was, "Oh, but you knew about this town planning scheme, or rather, you must be taken to have known about it; you had 'actual' notice of it by statute"; but Mr. Justice Eve would not carry it as far as that, and he said that a subscriber for shares cannot be taken to have waived a town planning scheme which would seriously affect the prospects of the company. So that there is some limitation to the rule that you have actual notice for all purposes of everything entered on the register.

With regard to these town planning schemes, they are very troublesome things from the point of view of people dealing with land, because as from a very early date in the history of the scheme they become binding on the land in this sense, that you are not prevented from building or altering your land in any way which is contrary to the scheme, but if you do make any new buildings or any alterations after the date when the scheme comes into effect provisionally, you cannot get any compensation if those buildings are thereafter pulled down for the purposes of the scheme. So building schemes want watching very carefully indeed.

You may remember that further provision is made by the amending Act of 1926 with regard to registration, and a scheme was introduced with regard to priority notices under which a priority notice can be given two days before registration is to take effect. I do not know that any question has really turned up on that, and beyond just reminding you that there is a special provision in the amending Act with regard to priority notices, I think I would rather pass away from that at the moment and deal with other things which may be rather more important.

I come next to registration of title. That applies to the registration of title which has been compulsory in the County of London now since 1898, and has also been extended to Hastings and Eastbourne. I think, so far as I can see, and so far as I can ascertain from my friends, since the amendments of the Act, not only the Land Registration Act but the changes made in the law in 1925, registration of title is working very much more smoothly; in fact I understand from a good many people who have had experience of it that they find it is working very well, and in many ways simplifies titles, lessens your work, and, so far as I can understand, does not reduce your costs. When registration of title was first brought in, it was very bitterly opposed by lawyers of all kinds, more particularly, I think, solicitors, but the Land Registrar who was in charge at that time gradually wore down the opposition, and the present Registrar is carrying on the same good work. One of the points to which he attached considerable value, and I think rightly, was that he so arranged it that there should not be any substantial loss of fees when land was registered with an absolute title. Anyhow, the boundary of the compulsory area is obviously about to be extended very shortly to the County of Middlesex. On the 13th July there appears in "Weekly Notes" a notice of an intended Order in Council which will make registration compulsory in the County of Middlesex as from 1st January, 1937. I believe one reason why the period is postponed possibly longer than it need have been is that you cannot very well extend the compulsory area until you have all the ordnance sheets—the large scale ordnance sheets—brought thoroughly up to date. So people are working very hard to get all the ordnance sheets brought up to date with a view to the registration becoming compulsory on the 1st January, 1937.

Most of the amendments which have been made in the Land Registration Acts of 1925 I think have simplified the working of the Acts, and particularly the change under which a person who is tenant for life of settled land has the absolute fee simple. That has enabled the rule to be made that a person who is the registered proprietor automatically has the legal estate in fee simple in the case of freehold land, and also has enabled a vital change to be made, in that no dealings with the legal estate can now take place except by a registered transfer. But there are certain amendments of the Act which seem to me to have exposed registered proprietors

to rather serious risks, and that is in respect of the rights of persons who are in possession of the land, or in occupation of the land, and more particularly rights acquired under the Statutes of Limitations. When the first Act relating to registration of title was introduced, the registered proprietor got his title quite independently of anybody who had acquired a right by long possession under the Statute of Limitations, or who was acquiring any such right, and the registered proprietor was conclusively the owner even against some person who had acquired by long possession; but that, in the course of the various statutes which have been passed, has been altered. Under the Act of 1925, "over-riding interests" are matters which you will remember bind a person even though he buys land for value and takes a registered transfer from the person who is registered as proprietor with an absolute title. They bind him although they do not appear on the register. The over-riding interests as amended now include "rights acquired or in the course of being acquired under the Limitation Acts," and "The rights of every person in actual occupation of the land or in receipt of rents and profits save where inquiry is made of such person and the rights are not disclosed." The idea there was this, that when you were investigating a title in the ordinary way, under the old practice you did not expect to find on the abstract short tenancies of the land and things of that kind, and, if you were wise, you would make investigation on the spot, and inquire of the people who were actually in occupation, and ask them what their rights were, or what rights they claimed. You will bear in mind very carefully that that kind of inquiry is just as important, if not more important, with registered land than in the case of other land. You are protected to this extent by the words I read out just now: if you do inquire of the person in actual occupation, and the person in actual occupation does not disclose certain rights which he afterwards claims, then you take free from them. But I think the most serious risk is in respect of s. 70 (*f*): "Rights acquired or in the course of being acquired under the Limitation Acts." That was exemplified in the case of *Chowood Ltd.* v. *Lyall* [1930] 2 Ch. 156. In that case the company, Chowood Ltd., bought some land. It was not in a compulsory area, but they bought certain land and became registered as first proprietors with an absolute title of a large field with certain strips of woodland surrounding it. They proved their title through the vendor in the ordinary way, and were registered with absolute title. Mrs. Lyall, the defendant in the case, was the owner of an adjoining estate, and it was proved in the course of the trial that although the boundaries of these woodlands were not very distinct, many years ago there had been an agreement as to where the boundary would come, and it had been agreed that certain of these strips of woodland were part of Mrs. Lyall's estate. Accordingly she applied to the court (by counter-claim) to rectify the register by removing the strips in question from the title of the company. Technically she was in possession of the woodlands, because they were rough strips of wood which nobody went near, except that either side would occasionally shoot over them. There was a practice to cut these woodlands once in seven years, but nothing had been done for about fourteen years by anybody, and technically, being in possession of her estate, she was in possession of these woodlands which formed part of it. So the register was rectified against the company. Thereupon, the company, having been registered with absolute title, applied for compensation, because they had suffered loss by the rectification of the register. You may have noticed that the Land Registrar occasionally sends out a sort of brochure or advertisement which is headed "State Guaranteed Title," and the company and their advisers naturally thought they were going to get something from this State guarantee. I found in the course of the case by certain investigations into records, that at that time the indemnity fund had amounted to something over £300,000. I made diligent search for any successful claims which had been made against this fund, and I did find a record of one for £35 6s. 11d., but I have not found any others. Well, a claim was made for compensation. The curious position about that fund is that the Revenue authorities are responsible for the fund if it does not turn out to be enough, and they are also, to a certain extent, trustees of the fund. Accordingly, whenever you want compensation out of the fund, unless it is a small amount and the Registrar is prepared to deal with it himself, you will find that the representatives of the Crown are opposing you in court. You will find the decision about the claim for compensation in *Re Chowood's Registered Land* [1933] Ch. 574. Mrs. Lyall had in fact acquired the neighbouring estate in the ordinary way by a conveyance for value as a purchaser. When I say "in the ordinary way," I think she bought it from her husband, but he had bought it, and it was a title which could be proved in the ordinary way by purchase deeds, and so on; but Mr. Justice Clauson held that where a person proves his title in the ordinary way by conveyances and title deeds, that is only evidence of a title to possession, and that therefore a person who has got a title by conveyance is a person who has acquired a title under the Statute of Limitations. I am bound to say I was a little surprised at that decision, but there it is. The case was not taken any further; but whether or not that was a right decision in the case, the decision and the Act itself when you come to look at it, makes it perfectly clear that even if you are buying land from a person who is registered with absolute title, and you take a transfer of a registered title for value, if in fact somebody has acquired a title to the whole property by twelve years' adverse possession, you get nothing at all; and because what you have acquired is subject to over-riding interests, according to this decision, you will not even get compensation. That at first sight seems a terrible flaw in the State guaranteed title, but I suppose that in most cases if you do make careful inquiry on the land, and in the neighbourhood of the land, and find out who is in possession and who are the tenants, and who has been in possession recently, you would probably find out if there was somebody who had been in possession for twelve years. But it does not follow, because in this case of *Chowood's* any amount of inquiry on the spot would not, I think, have disclosed the fact that these woodlands were part of the adjoining estate, and that Mrs. Lyall was technically in possession and had been in possession for some years; and, as I say, nothing had been done for at least fourteen years. So that there is that danger and risk even in the case of registered titles by reason of this amendment in the Act. Of course it is possible sometimes that a possessory title may have been acquired to a tunnel or an underground cellar which nobody knows anything about. There is one case in the Reports somewhere (I cannot remember where it is now, but I think it is reported) where somebody dropped a sack of coals and it went through the floor, and when they got through the floor they found a cellar underneath occupied by somebody else, and that person had acquired a statutory title. So that in that respect the registered title is not quite a State guaranteed title as you might think.

On the whole, however, when you are buying land, and you are told that the title is registered, you do feel that the thing is going to be simpler, and I think on the whole it would induce you to purchase rather than otherwise.

Rather an interesting case occurred as to what was meant by describing a house as of registered title in *Re Brine & Davies' Contract* [1935] Ch. 388. A house was put up for sale and described as a "registered freehold house"; the National Conditions of Sale applied, and an abstract was delivered on the 12th July. The abstract consisted merely of an entry in the register of the vendor as proprietor with possessory title. Of course, possessory title is not a thing in itself which is of very much value, and on the 8th August the purchaser, although out of time with his requisitions, raised the objection and said he wanted further proof, which the vendor could not furnish, and he wanted to get out of the contract. The

court held that this contract describing the property as a "registered freehold house" was misleading, and where you say you have a registered title, *primâ facie* that means that you are registered with absolute title.

Now I will pass to another subject, and that is party walls and open spaces. By the Law of Property Act, Sched. I, Pt. V, where a party wall or other party structure is held in undivided shares, the ownership shall be deemed to be severed vertically, and there shall be mutual rights of support. The object of doing that was, no doubt, that where you have a party wall it may be said that it belongs to two or more persons in undivided shares, and you do not want that wall to be held on a statutory trust for sale, and so that result was avoided. A little while ago a case was being considered in which there was some dispute as to what the true boundary of the land was, and it appeared pretty clearly that the boundary was in some form or other a hedge. There was also a question whether there might not have been a ditch, and there was also a dispute as to whether the boundary ran down the middle of the hedge, or one side or the other; and in looking up the law on that subject one came across this, that under the old common law cases where the boundary between two properties is a tree, the tree belongs to both parties as tenants in common, and thereupon it was suggested in that case either that the fence was a party structure, in which case it was held vertically divided (but it is pretty clear that a growing fence could not be called a party structure), or if the hedge was divided in the middle, according to the old common law rule, the parties would be tenants in common of the hedge, and so the hedge would be held in trust for sale. No decision was given in the case, but I think everybody agreed that where the proper division between two properties is the centre of a hedge, the division would be vertical; and accordingly, the position would be this, that if one person wanted to cut the hedge, each person could cut his own side of the middle but not so as to destroy or damage the hedge in so far as it was growing on the other side of the middle. It is curious how little law there was on the subject of a party hedge, as you might call it, and the decided cases seemed to suggest, as I say at common law, that it might be held by both as tenants in common.

Some rather curious results followed from the other portion of that same schedule, which provides for open spaces. The second sub-section in the schedule says this, that where before the Act an open space is held in undivided shares in right whereof each owner has rights of access and user, this public open space shall vest in the Public Trustee on the statutory trusts, but those trusts are not to be exercisable without leave of the court, and so on. In the case of *re Bradford City Premises* [1928] Ch. 138, the Corporation of the City of Bradford gave notice to purchase compulsorily, I suppose for some road widening scheme, certain premises, known as 72, 74, 76, White Abbey Road. The title was this: No. 72 had been conveyed to one, Robert Scaife, together with (and this is the part that raises the question about an open space): "one equal undivided moiety or half part of the yard at the rear of the said dwelling-house . . . and of the ashes place used in connection with the said house and adjoining premises and the whole of the most south-easterly of the two privies opening into the said yard." No. 74 and No. 76 were conveyed in similar terms, and the value of the yard was assessed at about £30. It was argued that the Act could not be intended to apply to every little yard to which neighbours might have access in common, and vest those in the Public Trustee on the statutory trusts, necessitating an application to the court before sale; but Mr. Justice Tomlin, as he then was, said that as there was no definition in the Act of what is meant by "an open space," every space that was open, however small, must come within the Act if the owners of neighbouring lands had rights of access in common; and so he held that this little yard was vested in the Public Trustee on the statutory trusts.

But a more recent case has put some limitation on that doctrine—*re Townsend* [1930] 2 Ch. 338. There, there was a railway siding, and it was held on a very complicated title. There were trustees of A and trustees of B, and between them they were entitled to this siding in undivided shares. Then, under a certain lease and a deed of variation of the lease, a large number of persons were entitled to use the siding on paying certain rents, but those various persons who had rights of access and user were not the owners of the neighbouring property, and it was held that this siding did not fall within the schedule, I think on the ground that the persons who have rights of access and user must be the same persons as those who are the owners of the property in undivided shares.

The next subject I come to is mortgage receipts. You will remember a great change was made by the Law of Property Act, where mortgages are being paid off. Instead of it being necessary to re-convey the land with a view to re-vesting the legal estate in the mortgagor, a receipt endorsed on the mortgage deed is sufficient for the purpose, provided it complies with the section. Section 115 says this: "A receipt endorsed on . . . a mortgage . . . which states the name of the person who pays the money" and is executed by the mortgagee shall operate to determine the term, or if there is no term, to re-convey the property to the person entitled to the equity of redemption. I am putting it more shortly than the Act. Then it says, where a receipt takes effect under this section, it is liable to the same stamp duty as a re-conveyance. So that the idea was merely to save the necessity for a re-conveyance, but without reducing the stamp duty which would go to the Revenue. But what causes a little difficulty there is that the next section seems to make the mortgage term come to an end, and to do away with the necessity of re-conveyance or the stamp merely by the payment off of the money, because s. 116 says this: "A mortgage term shall, when the money secured by the mortgage has been discharged, become a satisfied term and shall cease." So that one might ask: "Why trouble about having a special receipt under s. 115 to put an end to the term and get rid of the legal estate of the mortgagee when it is going to cease immediately the money secured has been discharged?" It may be said that you want the receipt for the purpose of proving that the money has been paid, but you will notice that a receipt only operates under s. 115, and therefore only requires a stamp when it is a receipt which states the name of the person who pays the money, and is executed by the mortgagee. So that it looks rather as if, when you do not want to pay the stamp, you have a receipt on the mortgage deed without stating the name of the person who pays the money, and it then does not operate under s. 115, but under s. 116 the term becomes a satisfied term and comes to an end. Perhaps that is almost too good to be true, and I do not know what view the authorities take upon it, but it is a little curious with regard to those two sections that s. 115 is quite unnecessary if s. 116 means what it appears to say.

Then there is a method by which you can also operate a transfer by means of a receipt. Sub-section (2) says this: "Provided that where by the receipt the money appears to have been paid by a person who is not entitled to the equity of redemption the receipt shall operate as a transfer to him." An instance of the operation of the second sub-section is a case of *Simpson* v. *Geoghegan* [1934] W.N. 282; 78 Sol. J. 930. There, there was a charge on land without any demise of the term, and a receipt was signed which stated that the money was paid by another party in these words, "it being intended that the receipt shall operate as a transfer." It was not under seal and there was no statement of the circumstances showing why the money was paid by another person. It was held that the section had been complied with, and that the receipt operated as a transfer although it was not under seal, and although the circumstances did not appear from the receipt at all.

There is one small point on sales of land, and that relates to the recovery of a deposit. Before the Act of 1925 was passed, a purchaser who had paid a deposit might be in a very

uncomfortable position, because suppose you pay a deposit and then you find that the conditions of sale, or provisions in the contract, or the particulars of sale, have been misleading —not absolutely untrue, but so misleading that the Court of Chancery would not grant the vendor specific performance, it was an old-established rule dating back to the time before the Judicature Act that an action to recover a deposit which had been paid was a common law remedy and depended on the old rules of common law, whereas the right to resist specific performance was an equitable remedy and depended on the rules of equity; and so it might happen that you were in a position to say: "I will not complete the contract; I have been misled by the conditions of sale," and if you tried to get the deposit back you would be met by the answer that there had been no breach of contract at law, and therefore, you could not recover the deposit. So s. 49 provides that: "Where the court refuses to grant specific performance of a contract, or in any action for the return of the deposit, the court may, if it thinks fit, order the repayment of any deposit." That does not in any way describe when or in what circumstances the deposit is to be returned; it is merely that the court may, if it thinks fit. There was a case not reported which came before Mr. Justice Clauson, which was rather a difficult case, and he finally decided it in favour of the purchaser, and the purchaser then said he would like to have the deposit back and the vendor said: "No, he is not entitled in this sort of case to have it back." Mr. Justice Clauson dealt with it very shortly. He said: "It must be a question of discretion, and in my discretion I direct that the purchaser shall have his deposit back," and he got it back. There was no way out of that. So it seems to be simply this, that the court has an absolute discretion.

There is one reported case where the section was applied; that is the case of *Charles Hunt, Ltd.* v. *Palmer* [1931] 2 Ch. 287; 75 Sol. J. 525. In that case certain leasehold shops had been put up for sale by auction, and they were described in the particulars as "valuable business premises." The National Conditions of Sale were incorporated into the contract, and by clause 6 of those conditions the purchaser was to be deemed to have notice of the terms of the lease under which the property was held, whether he had inspected it or not. The purchaser, buying in rather a hurry, did not inspect the lease, but he found that there was in these valuable business premises a restriction that the only business to be allowed was a ladies' outfitter, fancy draper and the manufacture of ladies' clothing, and as he did not want it for any of those purposes he claimed that the conditions or particulars had been misleading when these premises were described as "valuable business premises." The court held that applying the doctrine of equity, there had been a misleading description, and specific performance was refused, and the court in that case exercised its discretion, and ordered the return of the deposit. That is a case where, under the old rule before the Act the deposit could not have been claimed.

I now come to a series, and I am afraid it will be rather a longish series, of cases on different points relating to intestate succession and administration of assets. The first point I have put down to deal with is the question of assents, but I have already dealt with an important point on assents in a previous lecture dealing with vesting assents, and I think the only other case I need call attention to on assents is the case of *Re Spencer & Hauser's Contract* [1928] Ch. 598; 72 Sol. J. 336. Certain vendors had entered into a contract of sale, and they had entered into the contract in terms as trustees for sale. It turned out in fact that the land had not been devised to the vendors as trustees for sale, but they were executors, legal personal representatives, of the testator, and they had not yet assented to the devise of the property. The question was whether they could sell as personal representatives when they had entered into a contract of sale as trustees for sale. You might have thought it would not make much difference to the purchaser, but, of course, sometimes a purchaser takes advantage of a point like that when he has changed his mind. The section which applies is the same s. 36 of the Administration of Estates Act which I mentioned the other day. It says this: "A statement in writing by a personal representative that he has not assented shall, in favour of a purchaser, be sufficient evidence that no assent has been given, unless the assent is endorsed on the probate or letters of administration." Then, by s. 39, personal representatives, that is the executors, have all the powers of trustees for sale. So although they were not technically trustees for sale, they were persons entitled to deal with the property, and the purchaser was entitled to assume that they were acting properly as they had the powers of trustees for sale, and that the misstatement in the contract that they were selling as trustees for sale was not sufficient to enable the purchaser to get out of his contract.

I see it is time to stop. (*Applause.*)

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* The Solicitors' Journal.]

Public Policy and Some Modern Institutions.

Sir,—The author of the articles on "Public Policy and some modern Institutions" in your issues of 23rd March and 26th October last invites the views of your readers on "the doctrines of birth control," to which subject he confines himself almost exclusively notwithstanding the wide field covered by the title of his articles.

We think it is quite clear from a perusal of the articles that your contributor's own views are not sympathetic to these doctrines and he would no doubt not be displeased if his warnings led to a decrease in the number of bequests to institutions existing for the furtherance of birth control. The efficacy of the articles as a deterrent to testators should, however, be greatly diminished by a consideration of the following points:—

(1) The question as to the desirability of the use of contraceptives or as to the propriety of encouraging such use did not arise in the case of *Sutherland* v. *Stopes* [1925] A.C.; see, for instance, Cave, L.C., at p. 55. The writer of the articles appears, however, to consider that certain comments of the Lord Chief Justice and a passage from the judgment of Lord Finlay lead to the view that the validity of such bequests may be seriously questioned. As he does not quote the comments of the Lord Chief Justice to which he refers and which were in any case *obiter dicta*, we are unable to say whether these support his contention, but we submit that the passage from the judgment of Lord Finlay does not do so. Lord Finlay did not indicate his own views as to the desirability of encouraging the use of contraceptives as is shown by the concluding words of the passage in question, viz., "whatever view may be taken of such methods." We may also point out that Lord Carson did not, as your correspondent wrongly suggests, dissociate himself from Lord Wrenbury's views on the doctrines of birth control, but only from his views on the actions and writings of Dr. Stopes and of certain evidence produced on her behalf. In any event the fact that a judge does not subscribe to doctrines of birth control should not of itself lead him to treat those doctrines as contrary to public policy.

(2) In his article of 26th October your contributor writes "such cases as *Sutherland* v. *Stopes*, and, in a different sphere, *In re Grove Grady* [1929] 1 Ch. 557, act as salutary checks. They show the danger of assuming that doctrines which are widely held at the present time will necessarily be incorporated into our law by the Courts." We presume

that he means by this that the cases to which he refers show that the Courts may have a different conception of what is public policy from that held by members of the public. This may in certain instances be true, but, neither *Stopes* v. *Sutherland* nor *In re Grove Grady* are authorities on the point. The question at issue in the last-mentioned case was merely whether a trust in perpetuity for animals was or was not a good charitable trust, and not whether it was void as being contrary to public policy.

(3) The test of whether a bequest is contrary to public policy appears to be whether the State has or may have an interest that it should remain unperformed or unfulfilled. Moreover, the determination of what is contrary to public policy varies from time to time. In view of the fact that the Ministry of Health has expressly authorised the use of public funds for imparting information as to birth control in certain circumstances, it is, to say the least, highly improbable that the Courts would take a different view from the Government of the interests of the State. It is, moreover, common knowledge that the doctrines of birth control have the approval of a large number of people, including several of His Majesty's judges and other eminent public men and women, and it may certainly be questioned whether even ecclesiastical opinion, with the exception of that of Roman Catholics, is, in the words of your contributor, on the whole decidedly opposed to these doctrines. The opponents of birth control are, in fact, probably in the minority.

In view of these considerations it seems clear that the warnings of your correspondent need not be taken very seriously.

Arundel Street, W.C.2. BRABY & WALLER.
6th November.

[This letter has been shown to our contributor, who writes: "The deductions as to my personal views and motives are, to quote from one of the articles on this subject, both interesting and curious. I may mention that my original article, in the issue of the 23rd March, dealt with many topics besides birth control. It was the second article, by a critic, in the issue of the 12th October, that narrowed the field. But there are certain facts which are far more important than personal opinions. Space will permit me to mention but a very few of them. In regard to the religious aspect: Ecclesiastical opinion is definitely against the practice. The Jewish religion, which has always attached great importance to family life, is almost as hostile to it as is the Roman Catholic Church. To judge from the reports of conferences of the various Free Churches, most of their leading ministers are strongly opposed to the practice. Support for it in the Church of England is mainly confined to the modernist section, which is smaller than some people suppose. The Lambeth Conference resolutions on the subject are not very encouraging to strong supporters of birth control. To those who would like to make further investigation, I can only recommend a perusal of certain cases in the Patent Reports, such as *Prorace Ltd.* v. *Le Brasseur Surgical Manufacturing Co. Ltd.* [1927] 44 R.P.C. 73; particular attention should be paid to the *quaere* at the end of the headnote, and the comments of Russell, J. (as he then was), on pp. 76 and 77. In the same volume, at p. 298, is a very brief report: *In the Matter of an Application for a Patent by A. and H.* [1927] 44 R.P.C. 298, which is not without bearing on the subject. It may be that some of the apprehensions which were intended to be allayed by Messrs. Braby and Waller's letter will appear not unjustified after a study of these reports."—ED., *Sol. J.*]

The Prime Minister has declined another request to reopen the case of Miss Douglas-Pennant. A letter, signed by a number of prominent persons was forwarded recently to Mr. Baldwin asking for his attention. He has replied, intimating that he has nothing to add to what he has already said.

Notes of Cases.

Judicial Committee of the Privy Council.

North-Western Utilities Limited *v.* London Guarantee & Accident Co. Limited and Others.

Lord Hailsham, L.C., Lord Blanesburgh and Lord Wright.
24th October, 1935.

CANADA (ALBERTA)—NEGLIGENCE—GAS MAIN—LEAKAGE CAUSED BY ACT OF THIRD PARTY—BUILDING DESTROYED BY FIRE—LIABILITY OF GAS COMPANY.

Appeal from a judgment of the Supreme Court of Alberta (Appellate Division) reversing a judgment of Ford, J., delivered on the 27th February, 1934.

On the 21st February, 1932, a fire occurred in, and destroyed, the Corona Hotel, Edmonton, Alberta. The fire was caused by the escape into the hotel of natural gas which the appellants supplied to the inhabitants of Edmonton. In August, 1923, the appellants had, in exercise of their powers, laid a 12-inch intermediate pressure gas main along a lane near the hotel. The main was laid 3 feet 6 inches below the ground and was constructed with three welded joints. In 1931, the city authorities constructed a storm sewer system, and the underground building operations necessary for this purpose were immediately beneath the main and near the middle one of the three welded joints. After the fire it was discovered that the middle joint had given way and that the main in that part had sagged 6½ inches. The respondents, the owners and insurers, accordingly brought an action against the appellants for $320,278·64 damages, and the question was whether the appellants were responsible for the escape of their natural gas from one of their mains. For the appellants it had been contended that the breaking of the joint was due solely to the letting down by the city authorities of the soil under the main without providing adequate support for it. For the respondents it had been contended that the appellants had committed a breach of their absolute duty to take all precautions to prevent the escape of the dangerous gas in their mains, when they knew or ought to have known of the operations being undertaken by the city authorities. Ford, J., held that the appellants were not liable.

LORD WRIGHT, in delivering their lordships' judgment, said that gas was beyond question a dangerous thing within the rules applicable to things dangerous in themselves. The appellants were, therefore, *primâ facie*, within the principle of *Rylands* v. *Fletcher* (1868), L.R. 3, H.L. 330. *Primâ facie* they came within the rule of strict liability if gas escaped. The rule was not limited to cases where a defendant had been carrying or accumulating the dangerous thing on his own land. It applied equally in a case like the present (see *Charing Cross Electricity Supply Co.* v. *Hydraulic Power Co.* [1914] 3 K.B. 772). The rule of strict liability had been modified by the admitting as a defence that what was being done was being properly done in pursuance of statutory powers, and that the damage had not arisen out of any negligence on the part of the undertakers; also, the rule had been held to be inapplicable where the accident was due to act of God or to the independent or conscious volition of a third party (*Box* v. *Jubb* (1879), L.R. 4, Ex.D. 76). Their lordships agreed with the finding of the judge at the trial that the operations of the city authorities had caused the main to leak, but should the appellants have foreseen and guarded against that danger? The authorities showed that, although the act of a third party might afford a defence in cases of this type, the defendant might still be held liable in negligence if he did not foresee and guard against the consequences of that act. The appellants owed a duty to the respondents, even though the case fell outside the rule of strict or absolute liability, to exercise all care that the respondents should not be damaged. This particular operation of the city authorities was, as both the courts below had held, from its public nature

and conspicuous character such that the appellants' failure to know of it was plainly not consistent with due care on their part. They might have ascertained what was being done and satisfied themselves that no pipes were being disturbed. Their duty to the respondents was, at the lowest, to be on the watch and vigilant, but they had left it all to chance. They could not now protest that they could have done nothing effective to prevent the accident, and their lordships could in any case not accept that view. The appeal must therefore be dismissed.

COUNSEL: *Wilfrid Greene*, K.C., and *G. H. Steer*, K.C. (of the Canadian Bar), for the appellants; *Tilley*, K.C., *S. B. Woods*, K.C. (both of the Canadian Bar), and *Frank Gahan*, for the respondents.

SOLICITORS: *Charles Russell & Co.; Blake & Redden.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Appeals from County Courts.

In re a Debtor (No. 24 of 1935).

Clauson and Luxmoore, JJ. 29th and 30th October, 1935.

BANKRUPTCY—JUDGMENT AGAINST FIRM—NOTICE ADDRESSED TO FIRM—SERVICE OF ONE PARTNER ONLY—RECEIVING ORDER—JURISDICTION.

Appeal from Chelmsford County Court.

On the 21st November, 1933, the petitioning creditors recovered judgment for £403 7s. 2d. against a firm of merchants consisting of two partners, one of whom was the debtor. In April, 1935, a bankruptcy notice addressed to the firm was served on the debtor, but not at the address where the firm carried on business. He did not comply with the notice, and in May, 1935, a petition for a receiving order was presented. In the county court it was argued that the notice being addressed to the firm, no receiving order could be made against the debtor, an individual partner, even though it had been served upon him, unless it were shown that it had also been served on the other partner. The learned registrar overruled this objection, but dismissed the petition on other grounds.

CLAUSON, J., in giving judgment, said that the point had been the subject matter of a dictum of Wright, J., in *In re Wenham* [1900] 2 Q.B. 698, at p. 702. He there pointed out that to found a petition for a receiving order upon a bankruptcy notice addressed to a firm or served on an individual partner, the notice must follow the form of the judgment (as this one did) and must be served personally on the partner whom it was sought to make bankrupt. Clearly in his view service on other members of the firm was not a necessary preliminary. This dictum had been followed in bankruptcy practice since then and could not be disregarded. Having considered the other grounds, his Lordship allowed the appeal.

LUXMOORE, J., agreed.

COUNSEL: *J. B. Blagden; Cloutman.*

SOLICITORS: *Aukin & Co.; Stanley S. Levene.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Homes for Inebriates Association. The Association *v.* Attorney-General.

Farwell, J. 22nd November, 1935.

This was an application for an order authorising the Homes for Inebriates Association of Marylebone Road, W., to distribute its surplus assets amounting approximately to £5,000 equally between the Church of England Temperance Society for and in respect of its registered home at Caldecote Hall, Nuneaton, and the Community of St. Mary the Virgin, Wantage, for and in respect of its registered house at Spelthorne St. Mary, Chertsey. It appeared from the affidavit of Mr. F. A. Strike, liquidator of the association, that it had been formed in 1882 and owned two properties known as "The Cedars" and "Dalrymple House," at Rickmansworth, where male inebriate patients were treated. For many years the association, which was not carried on for profit, had many patients and prospered, but recently the numbers had fallen off and a serious loss had been incurred. It was decided to wind up the association and the appropriate resolution was passed. The assets were sold and the debts paid, and there remained the above-mentioned surplus of £5,000. Mr. Strike and Dr. Hogg, the former medical superintendent of the home, then made inquiries and ascertained that Caldecote Hall and Spelthorne St. Mary were the only homes in England carrying on similar work not for profit.

LANGFORD LEWIS, for the association, said that the present application was the first of its kind, and he submitted that it was a charity and the court had jurisdiction to consent to a *cy-près* scheme.

ANDREWES-UTHWATT, for the Attorney-General, said that whether or not the association was a charity the Attorney-General could interfere and be heard on the summons. If not there would in such cases be no means of preventing an improper application of the funds. The Attorney-General had considered the present scheme and thought it a proper one and would not oppose it.

FARWELL, J., in giving judgment, said, I do not think I need decide whether it is a charity or not. The memorandum of association provides that if the funds cannot be applied for the benefit of the association's work they may be given to other institutions having similar objects. I have only to be satisfied that the selected institutions have similar objects and that they will devote the funds, when they get them, to those objects. An order as stated was accordingly made authorising the proposed distribution.

SOLICITORS: *Baker & Savigny; the Treasury Solicitor.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Duncan *v.* Jones.

Lord Hewart, C.J., Humphreys and Singleton, JJ. 16th October, 1935.

POLICE — PUBLIC MEETING IN STREET — REASONABLE GROUNDS FOR APPREHENDING BREACH OF THE PEACE—RIGHT TO PROHIBIT MEETING—PREVENTION OF CRIMES ACT, 1871 (34 & 35 Vict., c. 112), s. 12—PREVENTION OF CRIMES AMENDMENT ACT, 1885 (48 & 49 Vict., c. 75), s. 2.

Appeal against a decision of the County of London Quarter Sessions affirming a conviction of the appellant at Tower Bridge Police Court upon an information preferred against her on the 6th August, 1934, under the Prevention of Crimes Act, 1871, s. 12, as amended by the Prevention of Crimes Amendment Act, 1885, s. 2, for that she did obstruct the respondent, Inspector Jones, in the execution of his duty.

The following facts were proved or admitted: At about 1 p.m. on the 30th July, 1934, some thirty persons, including the appellant, collected near the entrance to an unemployed training centre for the purpose of holding a meeting in Mynehead-street, New Cross, a cul-de-sac. At the entrance to the street was posted a notice containing, *inter alia*, the following words: "'Sedition' Meeting at the Test Centre. To-day (now) 1 p.m. . . . Defend the Right of Free Speech and Public Meeting." The appellant having been informed by the chief constable of the district that the meeting could not be held in Mynehead-street, but that it could be held in another street some 175 yards distant, attempted, notwithstanding, to deliver an address in Mynehead-street, whereupon the respondent took her into custody, to which she submitted without resistance. No obstruction of the highway or commission of, or incitement to, a breach of the peace was alleged. In May, 1933, the appellant had addressed a meeting opposite the training centre, and a disturbance had taken

place at the centre after the meeting. Subsequently, the police had defeated further attempts by the appellant to hold a meeting in that place. Some time before 30th July, 1934, the superintendent of the training centre communicated with the police, who consequently, and as the result of other reports, apprehended that a breach of the peace might result if a meeting were held on the 30th July. Before quarter sessions it was contended for the appellant that the respondent was not acting in execution of his duty, since no one at the meeting incited a breach of the peace or gave cause to suppose that one was about to be committed. The court were of opinion that the appellant must have known what were the probable consequences of her holding the meeting; that the respondent had reason to apprehend a breach of the peace; that it therefore became his duty to prevent the holding of the meeting; and that accordingly the appellant, in attempting to hold the meeting, was obstructing the respondent in the execution of his duty.

Lord Hewart, C.J., said that it had been suggested in argument that this was a grave case of what was called the right of public meeting. He (his Lordship) said "called" because English law did not recognise any special right of public meeting for a political or any other purpose. If the case had really raised the question whether an assembly might properly be held to be unlawful merely because the holding of it was expected to give rise to a breach of the peace, he would have required to hear much more argument before expressing an opinion. This case did not even touch that important question. It fell rather within *Reg.* v. *Prebble* (1858), 1 F. & F. 325, and the observations of Bramwell, B., at p. 326. Quarter sessions were entitled to find as a fact that there was a causal connection between the meeting of May, 1933, and the disturbance which followed it, and that the respondent had reasonably apprehended a breach of the peace after the meeting of July, 1934. The appeal must be dismissed.

Humphreys and Singleton, JJ., agreed.

Counsel: *D. N. Pritt*, K.C., and *Dingle Foot*, for the appellant; *R. M. Montgomery*, K.C., and *Vernon Gattie*, for the respondent.

Solicitors: *R. W. G. Mackay; Wontner & Sons.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

De Keyser *v.* British Railways Traffic & Electric Co. Ltd.

Lord Hewart, C. J. Humphreys and Singleton, JJ.
17th and 18th October, 1935.

Revenue—Customs—Vehicle used for Conveyance of Goods Liable to Forfeiture—Owner of Vehicle Ignorant of Wrongful Act—Forfeiture and Condemnation of Vehicle—Whether Justices have Discretion—Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 202, 207, 226.

Appeal by case stated against a decision of Justices for the Becontree Division of Essex.

The following facts were proved or admitted: the respondent company were at all material times the owners of a certain motor tank wagon which at the material time was in the possession of one, Harris, under a hire-purchase agreement with the respondents. On the 25th July, 1934, one, Dumbleton, an employee of Harris, loaded into the wagon 750 gallons of petrol, which is a light hydro-carbon oil, and later removed seventy-five gallons of the petrol from the wagon, replacing them by kerosene, a hydro-carbon oil other than a light hydro-carbon oil. In doing that, Dumbleton was guilty of an offence under s. 4 (1) of the Finance (No. 2) Act, 1931, and the mixture of oils made by him was liable to forfeiture under s. 4 (2) of the Act. Customs officers having seized the wagon under the Customs Consolidation Act, 1876, the respondents, who were unaware of any mixing of oils, received notice of the seizure from the Customs' authority, and accordingly claimed the wagon within the prescribed time. The appellant, a Customs officer, thereafter took proceedings under ss. 207 and 218 of the Act of 1876, claiming that the wagon should be condemned as forfeited. For the appellant it was contended that, under s. 202 of the Act, the justices were bound in law to make an order condemning the wagon. For the respondents it was contended (1) that the justices had a discretion as to whether they would condemn it or not; (2) that on any other view the provisions of ss. 207, 218 and 226 of the Act would be of no effect; and (3) that s. 226 specifically provides that in proceedings under ss. 207 and 218, the justices may examine the matter and, on proof that the goods are liable to forfeiture, may condemn them. The justices held that the wagon was liable to forfeiture under s. 202 of the Act, but that, in view of s. 226 and of the fact that the respondents were its rightful owners under the hire-purchase agreement, they had a discretion as to whether they would or would not condemn the wagon, and they declined to make an order doing so.

Lord Hewart, C.J., said that the respondents' view of this matter disclosed a misapprehension of the scheme of the relevant part of the Customs Consolidation Act, 1876. The justices had had to consider the meaning of s. 226. Both parties agreed that the first time the word "may" appeared in the last two lines of the section it meant "must." But it had been contended that the second "may," appearing after an interval of only a few words, meant "may, if the justices think fit." Counsel had referred to the leading case of *Julius* v. *The Bishop of Oxford* (1880), 5 App. Cas. 214, and the words of Earl Cairns, L.C., at p. 222. But here the power of the justices was coupled with a duty. When once the proper facts had been proved and the Customs officer had asked for condemnation of the vehicle, the justices had no choice but to condemn it. He (his lordship) was fortified in his view by *The Lord Advocate* v. *Crookshanks*, 15 Sess. Cas. (4th Series), p. 995. It might be contended with success that, say, by error a vehicle not liable to forfeiture had been seized. But this undoubtedly rigorous statute did not enable a claimant to ask the court to consider mitigating circumstances in order to take out of s. 202 a vehicle which was, by virtue of the facts proved, within the section. The circumstance that the claimants did not know of the wrongful use to which the vehicle was being put and any argument based upon it were irrelevant, the only question for the justices being whether, on the facts, the vehicle came within s. 202 or not. The appeal must accordingly be allowed, and the case be remitted to the justices with the direction that they had no alternative but to condemn the vehicle.

Humphreys and Singleton, JJ., agreed.

Counsel: *The Attorney-General* (Sir Thomas Inskip, K.C., and *Valentine Holmes*, for the appellant; *van den Berg*, K.C., and *Gordon Alchin*, for the respondents.

Solicitors: *Solicitor for Customs and Excise; W. S. Spaull.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Peacock *v.* Gyproc Products Limited.

Lord Hewart, C.J., Humphreys and Singleton, JJ.
1st November, 1935.

Factory—Dangerous Machinery—Obligation to Fence—Unfenced Shaft on a Railed Platform—Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 10.

Appeal by way of case stated from a decision of Rochester justices dismissing an information laid by the appellant against the respondents for that they, being occupiers of a factory, failed to keep certain dangerous machinery in the factory securely fenced, the machinery not being in such a position or of such construction as to be equally safe to every person employed in the factory as it would have been had it been securely fenced, contrary to s. 10 of the Factory and Workshop Act, 1901.

At the hearing of the information, the following facts were proved: There was in the factory a machine for mixing plaster, the elevator of which was driven by a horizontal shaft. The machine was on a railed platform about 8 feet above the floor and about 25 feet by 13 feet in area. The shaft was about 5 feet above the floor of the platform and revolved at forty-two revolutions per minute. The platform existed for the purpose of facilitating access to the shaft for oiling. No one would normally be near the shaft unless to oil it. The district inspector of factories, who had seen the shaft, had not ordered it to be fenced. An employee of the respondents was on the platform for the purpose of painting the ceiling, when his clothing became caught by the shaft and he sustained injuries from which he died. The accident could not have happened if the shaft had been protected.

For the appellant it was contended that the shaft was a dangerous part of the machinery within the meaning of s. 10 of the 1901 Act, was required to be fenced, and that the section applied not only to machinery to which workers normally had access but also to machinery to which access was either only occasional or only possible by climbing up to it. For the respondents it was contended that in the ordinary course of events no danger could reasonably have been anticipated from the shaft, and that it was impossible to say that machinery was dangerous because an accident happened in connection with it once. The justices accepted the respondents' contentions.

Lord Hewart, C.J., said that it was clear that there had been a strange misconception of the meaning of the very important s. 10 of the Act of 1901. The justices had clearly found the shafting not to be dangerous on the ground that in the ordinary course of human affairs danger could not be anticipated to arise from it, and had wrongly applied certain expressions to be found in the judgment in *Hindle* v. *Birtwhistle* [1897] 1 Q.B. 192. In that case, where a shuttle had blown out of a shuttle-race, the word frequency had been used in speaking of the accident. It had been right to consider the question of how often the shuttle was likely to fly out because that accident arose out of the happening of something quite outside the normal course of events. But that was quite different from the present case of a shaft, the function of which was to revolve. If it could be said that the shaft rarely revolved and then only by accident, there would be similarity with *Hindle's Case, supra*. The Act did not refer to machinery dangerous only to persons who might frequently be near it. Nor was it relevant that a factory inspector had, after seeing the shaft, not ordered it to be fenced. In his (his lordship's) opinion, not one of the propositions accepted by the justices in support of the view that the machinery was not dangerous was right. The appeal must, therefore, be allowed.

Counsel: *Helenus Milmo*, for the appellant; *J. W. Morris*, K.C., and *Gerald Thesiger*, for the respondents.

Solicitors: *The Treasury Solicitor; Arnold, Tuff and Grimwade.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

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Societies.

Inner Temple.

Grand Day.

Wednesday, 20th November, being the Grand Day of Michaelmas Term at Inner Temple, the Treasurer (Mr. A. M. Langdon, K.C.) and the Masters of the Bench entertained at dinner the following guests: The Archbishop of York, The Earl of Cromer (Lord Chamberlain), Field-Marshal The Earl of Cavan, The Earl of Bessborough, Viscount Dillon, Viscount Bledisloe, Lord Gorell, Lord Elton, Lord Rushcliffe, Lord Maugham, Sir Austen Chamberlain, Mr. Leslie Hore-Belisha (Minister of Transport), Sir Cuthbert Wallace (President of the Royal College of Surgeons), Sir Gerald Wollaston (Garter Principal King of Arms), Lieutenant-Colonel Sir Hugh Turnbull, Sir Walford Davies, Mr. A. E. Cutforth (President of the Institute of Chartered Accountants), the Master of the Temple, Mr. Percy Thomas (President of the Royal Institute of British Architects), Mr. E. Clement Davies, K.C., the Reader, and the Sub-Treasurer.

The following Masters of the Bench were also present: The Archbishop of Canterbury (Hon.), Lord Darling, Sir Francis Taylor, K.C., Viscount Ullswater, Sir Sidney Rowlatt, Sir John Simon, Sir Lancelot Sanderson, Sir William Hansell, K.C., Mr. A. W. Bairstow, K.C., Lord Roche, Mr. Alexander Grant, K.C., Lord Justice Scott, Mr. T. Hollis Walker, K.C., Sir Walter Clode, K.C., Mr. F. P. M. Schiller, K.C., Mr. R. M. Montgomery, K.C., Lord Wright of Durley (Master of the Rolls), The Hon. Sir Evan Charteris, K.C., Lord Justice Slesser, Sir Claud Schuster, K.C., Mr. R. F. Bayford, K.C., Sir Ernest Wingate-Saul, K.C., Mr. C. M. Pitman, K.C., Sir Boyd Merriman (President of the Probate, Divorce and Admiralty Division), Mr. P. E. Sandlands, K.C., Mr. Justice Bucknill, Mr. F. G. Thomas, K.C., Mr. Justice Goddard, Mr. M. J. L. Beebee, Mr. S. R. C. Bosanquet, K.C., Mr. W. O.

Willis, K.C., Sir George Bonner, Mr. R. A. Gordon, K.C., Mr. Charles Doughty, K.C., Mr. C. N. Tindale Davis, Mr. Norman Birkett, K.C., Sir Edwin Deller (Hon.), Mr. W. P. Spens, K.C., Mr. C. T. Le Quesne, K.C., and The Hon. Victor Russell.

Gray's Inn.

GRAND DAY.

Thursday, 21st November, being the Grand Day of Michaelmas Term at Gray's Inn the Treasurer (Master Bernard Campion, K.C.) and the Masters of the Bench entertained at dinner the following guests: The Swedish Minister, The Chairman of the London County Council (Lord Snell), Lord Roche, Lord Justice Greene, Mr. Justice Atkinson, Sir Claud Schuster, K.C., Sir William Pope, The Treasurer of The Hon. Society of the Inner Temple (Mr. A. M. Langdon, K.C.), Sir Rollo Graham-Campbell, Lieutenant-General Sir Harry Knox, the Dean of Christ Church (The Rev. A. T. P. Williams) and Captain Donald Campion.

The Benchers present in addition to the Treasurer were: Sir Dunbar Plunket Barton, K.C., Sir Montagu Sharpe, K.C., Sir Cecil Walsh, K.C., Mr. R. E. Dummett, Lord Thankerton, Lord Morison, Mr. James Whitehead, K.C., Mr. R. Storry Deans, Mr. A. Andrewes Uthwatt, Mr. Noel Middleton, Mr. N. L. C. Macaskie, K.C., Mr. W. Trevor Watson, K.C., Sir Albion Richardson, K.C., and Mr. R. Warden Lee, with the Preacher (Canon F. B. Ottley) and the Under-Treasurer (Mr. D. W. Douthwaite).

British Records Association.

ANNUAL CONFERENCE.

This Association held its annual conference at Burlington House, on Monday, the 18th November. The morning was given up to a meeting of the Records Preservation Section, over which Miss JOAN WAKE presided. After formal business Miss L. J. REDSTONE opened a discussion on "Methods of Publicity to prevent the Destruction of Local and Private Records," and Mr. HILARY JENKINSON (Hon. Secretary) read a paper on "Repairing Work for Amateurs." The objects of this section are to discover all manner of private records, such as title deeds and manorial rolls, and local records, such as the minutes of old local authorities and parish councils, and arrange for their repair and proper custody in suitable muniment rooms where they may be available for students and the rich historical material they contain be accessible to those qualified to make use of it.

The conference of the Association held in the afternoon, with Sir Frederick Kenyon, President of the Society of Antiquaries, in the chair, was opened by LORD PASSFIELD with a paper on "The Possibility of Tracing and Listing the Records of Defunct Local Administrations and Semi-Public Bodies." He enumerated an amazing number of such bodies whose very names are unknown to most persons nowadays, and who accumulated masses of records concerning their activities and, for various reasons, ceased to exist. Large quantities of these records are probably still in existence if only they could be found. One of the most interesting of such bodies, said Lord Passfield, were the turnpike trusts, of which about 200 had been incorporated for the care of particular portions of road. They had never been given a term of longer than twenty-one years, at the end of which each had to apply to Parliament for a special Act to enable it to continue. The last of these trusts had expired in 1890. They had nearly all let out their tolls to firms of Jewish contractors and had done little but hold annual meetings. Many old-fashioned firms of solicitors could, his lordship believed, produce these records from their attics; solicitors by training never destroyed anything but placed it in an attic with a label. Highway boards had been incorporated in large quantities when turnpike roads had been given up. The functions of these boards had been taken over by rural district councils and county councils, who probably possessed their records. There had also existed many commissioners of sewers, the forerunners of the present drainage boards, and ancient bodies such as the Lords of the Level in Romney Marsh, whose commission had been the prototype of all commissions issued by the King to Commissioners of Sewers. When urban districts had been growing up rapidly they had not possessed municipal corporations, and had, therefore, been obliged to create Improvement Commissions to look after their public services such as lighting, cleansing and drainage. Their records would be in the keeping of the town or county borough council with whom they were eventually merged. In the days before the Public Prosecutor, the Attorney-General or the police forces it had been necessary to denounce criminals to prosecution committees in order to institute an indictment at quarter sessions. Records of manor courts contained large numbers of names of persons liable to fine, but occasionally included such valuable material as a record of decisions by a meeting of tenants of the manor altering the method of cultivation of a whole village from a three-year to a six-year course.

Other bodies mentioned by Lord Passfield were those charged with inspecting markets and weights and measures; the canal companies, whose records were at present probably in the possession of the railway companies, and the special courts and local authorities in mining districts other than coal fields. He suggested that in order to find out what records existed the Association should send out a large number of letters to likely people, construct a provisional list, and publish it in local newspapers with appeals for amplification and correction. He had found this method invaluable. The people to approach were county councils, public utility companies, drainage boards, vestry and parish officers, the Commissioners of Woods and Forests and the Ecclesiastical Commissioners. He suggested as a task for the Association that a list should be made of all the documents in each of the 10,000 English parishes.

Mr. E. W. SCORER, speaking on the same subject, said that the *custos rotulorum* for a county had generally been the Lord-Lieutenant, and the descendants of past lords-lieutenant probably possessed large stores of forgotten documents. Other records that should be traced were those of sheriffs, coroners and parish authorities. He considered that the best authority for collecting and preserving local records was the county council.

LORD WRIGHT presided at the annual general meeting of the Association, for, as Master of the Rolls, he has succeeded Lord Hanworth in its presidency. In moving the adoption of the report and accounts he expressed deep regret that Lord Hanworth, through ill-health, had been obliged to resign. He had done admirable work since the formation of the Association in 1932, combining a very high standard of public duty with great personal enthusiasm for its work. When his health improved, he would no doubt again take an active part in its affairs. Lord Wright confessed that, coming to the presidential chair at short notice, he felt inadequate to the performance of his duties. He proposed, however, with the help of Mr. Jenkinson, quickly to remedy the defects in his knowledge of the objects and work of the Association. The great number and variety of archives and institutions affiliated to the Association were evidence of the scope of its work and the co-ordination which it offered archivists of all grades. During the past year the work of organising and strengthening the Association had proceeded satisfactorily. The number of institutional members had increased by about forty, which included twenty-five cities and boroughs or their libraries. Some new American memberships had been added and some of the Cambridge colleges had joined. The grant from the Carnegie Trust which had hitherto been given to the Records Preservation Section was now exhausted, and there was some anxiety about its financial position. The general funds of the Association were, however, in a position to maintain the work at its present level and the question of future policy would be given close attention by the Council. A report was soon to be issued by the classification committee on the general classification of English archives. The committee which dealt with legislation affecting archives was pursuing its work, and its report when completed would mark an exceedingly important stage in the history of the Association.

Members and guests were entertained in the evening to a reception at the Grocers' Hall, where the Master of the Rolls and the Master of the Worshipful Company of Grocers received the guests and an exhibition of records was on view. This included a number of documents which had recently passed through the hands of the Records Preservation Section.

Gray's Inn Debating Society.

The first meeting of the term was held in Gray's Inn Common Room, at 8.15 p.m., on Friday, 15th November, when the annual joint debate with the Christ Church Law Society took place, the President being in the chair. The motion for debate was "That the return of the National Party to power at yesterday's General Election is a credit to the electorate." The President having made a short speech welcoming the members of the visiting society, the motion was proposed by Sir John Prichard-Jones, Bart., and opposed by Mr. T. B. Smith (Christ Church Law Society), Mr. Stormont Mancroft (Christ Church Law Society) spoke third, and Mr. Geoffrey Briggs spoke fourth. On the motion being thrown open to the house, Mr. J. M. Foley spoke in favour of the motion, and Mr. A. Gordon Huson and Mr. T. A. E. Spearing against it, after which the opposer and proposer successively replied. The motion was carried by sixteen votes to eight, the number of members and guests present being thirty-eight.

Law Students' Debating Society.

At a meeting of the Society, held at The Law Society's Court Room, on Tuesday, 12th November (Chairman, Mr. R. W. Jackling), the subject for debate was: "That this house deplores a General Election at the present juncture of international and domestic affairs." Mr. S. L. H. Jackson opened in the affirmative and Mr. J. F. Claxton opened in the negative. The following members also spoke: Messrs. S. C. Baron, A. T. Wilson, R. Langley Mitchell, G. Roberts, J. P. R. Oakes, J. R. Campbell Carter, P. H. North Lewis, L. Stone, and Miss U. A. Hastie. The opener having replied the motion was lost by eleven votes. There were sixteen members and one visitor present.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 19th November (Chairman, Mr. J. R. Campbell Carter), the subject for debate was "That the case of *Shipley U.D.C.* v. *Bradford Corporation* [1935] W.N. 111, was wrongly decided." Mr. P. W. Iliff opened in the affirmative; Mr. R. P. A. Garrett opened in the negative. Mr. R. F. Gingell seconded in the affirmative; Mr. R. E. Selby seconded in the negative. The following members also spoke: Messrs. A. P. Wilson, Q. B. Hurst, M. C. Batten, E. W. J. Cambridge, E. V. E. White, W. M. Pleadwell, G. G. Jeudwine, F. G. Timmins, and P. H. North-Lewis. The opener having replied, and the Chairman having summed up, the motion was carried by one vote. There were fifteen members and five visitors present.

The Hardwicke Society.

A meeting of the Society was held on Friday, 15th November, at 8.15 p.m., in the Middle Temple Common Room, the President (Mr. T. H. Mayers) in the chair. Mr. W. L. Fearnehough moved: "That in the opinion of this house war is a necessary evil." Mr. T. K. Wigan opposed. There also spoke, Mr. D. Campbell Lee, Mr. Fairfax-Lucy, Mr. Scholefield, Mr. Douglas, Mr. A. Newman Hall, Mr. Crichton, Mr. J. Reginald Jones, and Mr. James A. Petrie (Hon. Treasurer). The hon. mover having replied, the house divided, and the motion was carried by one vote.

United Law Society.

A meeting of the United Law Society was held in the Middle Temple Common Room, at 7.45 p.m., on Monday the 18th November. Mr. A. Blundell proposed the motion: "That this House approves the policy of nationalisation of the banks." Mr. R. J. Kent opposed; Miss Colwill and Mr. Burke also spoke. After Mr. Blundell had replied, the motion was put to the house and lost by seven votes. There were fourteen members present.

University of London Law Society.

The University of London Law Society held a debate at University College, Gower-street, on Tuesday, 26th November, the President (M. O'C. Stranders, Esq., LL.B.) being in the chair. The subject discussed was "The Abolition of Slavery was a mistake." Proposer, Mr. Wicks; opposer, Mr. Reed. There also spoke: Messrs. Potekiakhoff, Garner, Chand, F. E. C. Wood, Ketey, Kraft, Rogers, Cole. The motion was lost by seven notes to nineteen.

Rules and Orders.

THE SANITARY OFFICERS (OUTSIDE LONDON) REGULATIONS, 1935, DATED NOVEMBER 7, 1935, MADE BY THE MINISTER OF HEALTH. [S.R. & O. 1935, No. 1110. Price 3d. net.]

THE SANITARY OFFICERS (LONDON) REGULATIONS, 1935, DATED NOVEMBER 7, 1935, MADE BY THE MINISTER OF HEALTH. [S.R. & O., 1935, No. 1111. Price 1d. net.]

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve that WILLIAM SHEPHERD MORRISON, Esq., M.C., K.C., M.P., be appointed Financial Secretary to the Treasury in the room of A. Duff Cooper, Esq., D.S.O., M.P., appointed Secretary of State for War.

LORD SANKEY has been elected Treasurer of the Middle Temple for the ensuing year. Mr. D. N. PRITT, K.C., M.P., Mr. RAYMOND NEEDHAM, K.C., and Mr. HENRY JOHNSTON have been elected Masters of the Bench.

LORD HANWORTH has been elected Treasurer of the Inner Temple for the year 1936. Mr. Justice TALBOT has been elected Reader for the Lent Vacation. Mr. R. P. CROOM-JOHNSON, K.C., Mr. N. B. GOLDIE, K.C., Mr. ARTHUR MOON, K.C., and Mr. A. W. COCKBURN have been elected Masters of the Bench.

The Right Honourable LORD MORISON, a Senator of the College of Justice in Scotland, has been elected Treasurer of Gray's Inn for the year 1936, in succession to Mr. Bernard Campion, K.C., who has been elected Vice-Treasurer for the same period.

At a recent meeting of the Legal Board of the Church Assembly, Chancellor F. H. L. ERRINGTON, Chancellor of the Diocese of London, was re-elected chairman. Mr. Errington was called to the Bar by Lincoln's Inn in 1882.

Mr. HAROLD E. BRAITHWAITE, solicitor, Deputy Town Clerk of Southampton, has been appointed Town Clerk of Colwyn Bay. Mr. Braithwaite was admitted a solicitor in 1924.

Professional Announcements.

(2s. per line.)

MESSRS. STONEHAM & SONS have taken over the practice of the late Mr. Jeffes in Brussels, and in future the practice will be carried on at 11, Rue de Joncker, Brussels, under the name of Stoneham, Sons & Furnivall (incorporating Jeffes and Co.).

SOLICITORS & GENERAL MORTGAGE & ESTATE AGENTS ASSOCIATION.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office: 12, Craven Park, London, N.W.10.

Notes.

A lecture by Mr. Herbert Morrison, M.P., on "How the London County Council does its Work," will be given at Montagu House, Whitehall, at 6 p.m., on the 12th December.

The Worshipful Company of Painter-Stainers gave a dinner last Wednesday, in honour of Mr. A. T. Roach, the Town Clerk of the City of London, a Liveryman of the Guild. Major Edmund Howard, the Master, presided.

The Council of Legal Education have issued the rules for the Bar examination to be held on 11th, 12th, 13th, 14th and 15th May, 1936, in the Niblett Hall, Inner Temple. The council have also issued the prospectus of lectures of the readers and assistant readers, which will be delivered at Lincoln's Inn during Hilary Term.

Mr. A. P. Herbert, now M.P. for Oxford University, was among those who received their degrees in Congregation at Oxford last Saturday. Mr. Herbert took a First Class in Jurisprudence in 1914, which qualified him for his Bachelor of Arts degree. Although he had kept his name on the books, he had not taken the degree.

In the absence of Lord Reading, president of the Society of Comparative Legislation, Lord Atkin will preside at a dinner to be given to Lord Macmillan, who will be accompanied by Lady Macmillan, by the society on Monday, 2nd December, at the Savoy Hotel. Lord Macmillan will speak about his recent visit to Argentina, Brazil and Uruguay.

At the Mayor's banquet, held on 9th November, the Mayor of Dartmouth, on behalf of the borough, presented to Mr. Edward Cuff, the Town Clerk, a silver cigarette box bearing the borough coat of arms and the inscription: "Presented to Edward Cuff, Esq., Town Clerk of Dartmouth, in appreciation of the services rendered by him in connection with H.M. King George's Silver Jubilee Celebrations, 1935."

Under the will of John Brown Douglas a bequest of £2,000 has been left to Glasgow University to endow a lectureship in English Literature to be called the W. P. Ker Lectureship, and his trustees have been directed to hold and invest the residue of his means and estate, after the payment of various legacies, to form the nucleus of a fund for the establishment of a whole-time Chair or Professorship of Roman or Civil Law in the University.

The following scholarship awards at Gray's Inn are announced: Lord Justice Holker Junior Scholarships (£100 a year for three years).—Mr. R. M. Clough, of Clare College, Cambridge, and Mr. E. C. Ryder, of Gonville and Caius College, Cambridge. The Society's Entrance Scholarships (£100 a year for three years).—Mr. E. P. Wallis-Jones, of Balliol College, Oxford, and Miss R. Heilbron, LL.B., of Liverpool University.

The following scholarships, studentships and prizes have been awarded by the Scholarship Committee of the Inner Temple: Mr. R. C. Chope, Mr. G. B. N. Hartog and Mr. J. G. S. Hobson.—Entrance Scholarships of 200 guineas a year for three years. Mr. W. Gumbel, Mr. F. Lawton and Mr. L. J. Solley.—Yarborough-Anderson Scholarships of £100 a year for three years. Mr. G. C. Dare, Mr. P. Stanley-Price, Mr. W. Gumbel and Mr. W. E. A. Lewis.—Pupil Studentships of 100 guineas. Mr. P. Stanley-Price.—Profumo Prize of £105. Mr. A. L. Armitage.—Poland Prize of £23.

Mr. F. R. A. W. Conway, Deputy Town Clerk of Great Yarmouth, who, as announced in our issue of the 16th November, was appointed Town Clerk of Colwyn Bay, subsequently wrote explaining developments which made him desire to remain in his present position. The General Purposes Committee of Great Yarmouth Council reported to that authority that they had invited Mr. Conway to remain in his present office and become Town Clerk as from 1st January, 1937, on the retirement of Mr. W. Edgar Stephens. The Colwyn Bay Council have decided to release Mr. Conway.

The Chadwick Trustees announce that a public lecture on Town and Country Planning and the Housing Act will be given by Dr. R. C. Maxwell, O.B.E., LL.D. (London), in The Inner Temple Hall (by kind permission of the Treasurer and Masters of the Bench of the Honourable Society of the Inner Temple), on Tuesday, 3rd December, at 8.15 p.m. W. Addington Willis, Esq., C.B.E. (Chadwick Trustee), will preside. Information concerning Chadwick Public Lectures may be obtained from the Secretary, Mrs. Aubrey Richardson, O.B.E., at the Offices of the Trust, 204, Abbey House, Westminster, S.W.1.

In the course of a lecture on "The Provisions of the Companies Act 1929: Accounts and Auditors," which he delivered before the Sheffield and district members of the Institute of Company Accountants recently at Sheffield, Mr. John H. Booth, solicitor, dealt with the statutory duty of all companies to keep proper books of account and in particular with the effect on that obligation of the recent case of *Hearts of Oak Assurance Co. Ltd.* v. *James Flower and Sons*, 79 SOL. J. 839. Mr. Booth informed his audience that he thought some indication as to whether proper books of account could be kept by way of loose leaves should or at least could be given by the Board of Trade, but that in the absence of any such notification, or the decision being overruled it would appear that as the appropriate section reads at present at least a technical offence is being committed by the use of loose leaves. He also dealt with the growing need for some amendment in the law so far as the requirements of the profit and loss account were concerned, and the inadequate requirements in relation to Holding Companies and their accounts for publication, and in particular the urgent need for some statutory enactment to prevent or check the rapidly increasing system of forming sub-subsidiary companies.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Non-Witness.	MR. JUSTICE BENNETT. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
Dec. 2	Ritchie	Hicks Beach	Jones	*Blaker
,, 3	Blaker	Andrews	Hicks Beach	*Jones
,, 4	More	Jones	Blaker	*Hicks Beach
,, 5	Hicks Beach	Ritchie	Jones	*Blaker
,, 6	Andrews	Blaker	Hicks Beach	Jones
,, 7	Jones	More	Blaker	Hicks Beach
	GROUP I. MR. JUSTICE CROSSMAN. Witness. Part II.	MR. JUSTICE CLAUSON. Witness. Part II.	GROUP II. MR. JUSTICE LUXMOORE. Witness. Part I.	MR. JUSTICE FARWELL. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Dec. 2	Hicks Beach	*Ritchie	*Andrews	More
,, 3	*Blaker	Andrews	*More	Ritchie
,, 4	Jones	*More	*Ritchie	Andrews
,, 5	*Hicks Beach	Ritchie	Andrews	More
,, 6	Blaker	*Andrews	*More	Ritchie
,, 7	Jones	More	Ritchie	Andrews

* The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 5th December, 1935.

	Div. Months.	Middle Price 27 Nov. 1935.	Flat Interest Yield.	‡Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	115¾	3 9 1	2 19 7
Consols 2½%	JAJO	85¾	2 18 4	—
War Loan 3½% 1952 or after	JD	106	3 6 0	3 0 11
Funding 4% Loan 1960-90	MN	117½	3 8 1	2 19 4
Funding 3% Loan 1959-69	AO	103	2 18 3	2 16 6
Victory 4% Loan Av. life 23 years	MS	115½	3 9 3	3 1 0
Conversion 5% Loan 1944-64	MN	118¾	4 4 2	2 7 10
Conversion 4½% Loan 1940-44	JJ	110xd	4 1 10	2 10 3
Conversion 3½% Loan 1961 or after	AO	107½	3 5 1	3 1 4
Conversion 3% Loan 1948-53	MS	104⅝	2 17 5	2 11 2
Conversion 2½% Loan 1944-49	AO	101½	2 9 3	2 6 0
Local Loans 3% Stock 1912 or after	JAJO	96½	3 2 2	—
Bank Stock	AO	368½	3 5 1	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	87½	3 2 10	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	96	3 2 6	—
India 4½% 1950-55	MN	114	3 18 11	3 4 9
India 3½% 1931 or after	JAJO	97½	3 11 10	—
India 3% 1948 or after	JAJO	87	3 9 0	—
Sudan 4½% 1939-73 Av. life 27 years	FA	118	3 16 3	3 9 4
Sudan 4% 1974 Red. in part after 1950	MN	114	3 10 2	2 16 9
Tanganyika 4% Guaranteed 1951-71	FA	114	3 10 2	2 16 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	110	4 1 10	2 13 6
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	110	3 12 9	3 6 1
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	103xd	3 12 10	3 9 3
Canada 4% 1953-58	MS	111	3 12 1	3 3 8
*Natal 3% 1929-49	JJ	101	2 19 5	—
*New South Wales 3½% 1930-50	JJ	102	3 8 8	—
*New Zealand 3% 1945	AO	102	2 18 10	2 15 2
Nigeria 4% 1963	AO	112	3 11 5	3 6 9
*Queensland 3½% 1950-70	JJ	102	3 8 8	3 6 4
South Africa 3½% 1953-73	JD	106	3 6 0	3 1 3
*Victoria 3½% 1929-49	AO	101	3 9 4	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	96	3 2 6	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	106	3 6 0	3 0 11
Leeds 3% 1927 or after	JJ	94	3 3 10	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	105	3 6 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	82	3 1 0	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	95	3 3 2	—
Manchester 3% 1941 or after	FA	94	3 3 10	—
*Metropolitan Consd. 2½% 1920-49	MJSD	100	2 10 0	2 10 0
Metropolitan Water Board 3% "A" 1963-2003	AO	98	3 1 3	3 1 5
Do. do. 3% "B" 1934-2003	MS	98	3 1 3	3 1 5
Do. do. 3% "E" 1953-73	JJ	100	3 0 0	3 0 0
Middlesex County Council 4% 1952-72	MN	113	3 10 10	3 0 2
† Do. do. 4½% 1950-70	MN	116	3 17 7	3 2 11
Nottingham 3% Irredeemable	MN	95	3 3 2	—
Sheffield Corp. 3½% 1968	JJ	104	3 7 4	3 6 1
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	113	3 10 10	—
Gt. Western Rly. 4½% Debenture	JJ	123½	3 12 10	—
Gt. Western Rly. 5% Debenture	JJ	136½	3 13 3	—
Gt. Western Rly. 5% Rent Charge	FA	132½	3 15 6	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	130½	3 16 8	—
Gt. Western Rly. 5% Preference	MA	117½	4 5 1	—
Southern Rly. 4% Debenture	JJ	112	3 11 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	111½	3 11 9	3 7 0
Southern Rly. 5% Guaranteed	MA	130½	3 16 8	—
Southern Rly. 5% Preference	MA	117½	4 5 1	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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SUSSEX—*continued.*

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COOKES & SOUTHORN (C. H. SOUTHORN, F.S.I.), Leamington Spa. Est. 1820.
FAYERMAN & CO., F.A.I., 57, The Parade, Leamington Spa. Est. 1874.
HOWKINS & SONS, F.A.I., 12, Albert Street, Rugby, & Northampton.
KIBLER MORGAN, 57, Ely Street, Stratford-upon-Avon. Tel. 110.
GEO. LOVEITT & SONS, 61, Hertford St., Coventry. 3081. (Est. 1843).
FRANK MASON, F.A.I., 28, Trinity Churchyard, Coventry. Tel. 3095.
SLATER, DANN & CO., Sutton Coldfield. Tel. 2287 ; also Birmingham.
JOHN STAITE & SONS, F.A.I., 7, Euston Place, Leamington Spa. Tel. 36.
JAMES STYLES & WHITLOCK, F.A.I., The Estate Offices, Rugby. Tel. 70.

WILTSHIRE.

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G. HERBERT BANKS, F.A.I., Worcester St. Kidderminster. Est. 1898.
BENTLEY, HOBBS & MYTTON, F.A.I., Worcester. Tel. 49. Est. 1780.
CATTELL & YOUNG (ALEX. YOUNG, F.A.I.) Worcester St., Kidderminster
R. D. CLARE, F.A.L.P.A., 47, Foregate St., Worcester. Tel. 513.
HENRY COOMBS & SMITH, F.A.I., Worcester. Tel. 35. Est. 1870.
ARTHUR G. GRIFFITHS, F.A.I., 14, Foregate St., Worcester. Est. 1897.
J. G. LEAR & SON, F.A.I., Malvern. Tel. 160. Est. 1863.
PHILIP LEVENS & SON, F.A.I., 110, High St., Bromsgrove. Tel. 84.
NOCK & JOSELAND, F.A.I., Bank Buildings, Kidderminster. Tel. 53.
W. P. WOODWARD, A.A.I., Broad Street, Worcester. Tel. 101.
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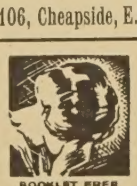
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PERIODICAL SALE No. 1235.
AT THE LONDON AUCTION MART,
155, QUEEN VICTORIA STREET, E.C.4,
on THURSDAY next, 5th DECEMBER, at 2.30.

ABSOLUTE REVERSION on decease of life 50 to about £20,000. ABSOLUTE REVERSION, same life, to about £1,500. Solicitor: Bertie F. Browne, Esq., 12, Clarges-street, W.1.

REVERSION, life 61, provided male 29 survive, to about £2,000. Solicitors: Messrs. Lawrence, Graham and Co., 6, New-square, Lincoln's Inn, W.C.2.

REVERSION, life 59, contingent on survivorship, to about £2,400. REVERSION, life 59, contingent on survivorship, to about £1,200. Undivided 1-16th share in possession of about £3,284. Solicitors: Messrs. Hallett, Creery & Co., Ashford, Kent.

ABSOLUTE REVERSION, subject to certain life interests and annuities, to about £8,000. Solicitors: Messrs. Lazarus, Son and L. A. Hart, 10, Queen-street, Mayfair, W.1.

ABSOLUTE REVERSION to 7-24th of £19,250, L.M. & S. Rly. 4 per cent. Preference Stock, subject to annuities of £700. Solicitor: G. H. Hindley, Esq., 30, North John-street, Liverpool, 2.

ABSOLUTE REVERSION, life 66, to £11,385. Solicitors: Messrs. Torr & Co., 38/39, Bedford-row, W.C.1.

ABSOLUTE REVERSION, life 79, to about £4,000. Solicitors: Messrs. Lazarus, Son and L. A. Hart, 10, Queen-street, Mayfair, W.1.

REVERSION, on decease, without issue, of lady 64, to about £1,533. Also REVERSION on decease, without issue, of lady 59, to £1,533. Solicitors: Messrs. Hargraue, Son & Barrett, 24, John-street, Bedford-row, W.C.1.

ABSOLUTE REVERSION, life 54, to £775. Solicitors: Messrs. Hughes, Hooker & Co., 26, Budge-row, E.C.4.

ABSOLUTE REVERSION, life 57, to about £1,000.

ABSOLUTE REVERSION on first to die, lives 69 and 64, to 1-6th of 750 4 per cent. £10 Preference Shares in Shorts Ltd. ABSOLUTE REVERSION, on last to die, same lives, to another 1-6th share. Solicitors: Messrs. Bird, Eldridge & Vinter, 18, John-street, Bedford-row, W.C.1.

UNDIVIDED HALF SHARE in possession of £3,224 War Loan and Nos. 55 to 57, Drury-lane, W.C. Unexpired term 45 years at £740 per ann. Underleased at £2,800 per ann. Solicitors: Messrs. Arthur Pyke & Co., 24, Lincoln's Inn-fields, W.C.2.

ONE-THIRD SHARE IN POSSESSION of Leasehold property, 62/63, Basinghall-street, E.C., unexpired term 26 years. Solicitor: E. S. P. Haynes, Esq., 9, New-square, Lincoln's Inn, W.C.2.

LEASEHOLD GROUND RENTS £231 10s. per ann., arising out of properties at Gibbins-road and Carpenters-road, Stratford, E. Held at £4 9s. 6d. for 22, 21 and 27 years. Solicitors: Messrs. Burton & Co., Stonebow, Lincoln.

FREEHOLD GROUND RENT £40 per ann., arising out of shop premises, No. 146A, Goldhawk-road, Shepherd's Bush. Reversion in 1946 to rack rental. Solicitors: Messrs. W. H. Matthews & Co., 43, High-street, Sutton.

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Vendors, solicitors and trustees having properties for sale are respectfully invited to communicate with the Auctioneers, at their Offices, 6, Poultry, London, E.C.2. Telegrams: "Invariably, Stock, London." Tel. No. City 1451 (3 lines).

By order of Trustees.
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FREEHOLD GROUND RENTS
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Stockwell: 2 to 23 (odd), Prideaux-road.
Clapham: 32, 34, 36 and 40, Rectory-grove, 34 and 36, Orlando-road.
Wandsworth: 117, 119, 121, 125, 127, 129, 131, 154, 156, 158 and 160, Heythorp-street.
Battersea: 29, 31, 33, 35, Savona-street.
Penge: 49 to 59 (odd), Maple-road.
Selhurst: 11 to 14, Newhaven-road.
Croydon: 43 to 46, Lahore-road.
Plumstead: 2 to 18 (even), Miriam-road.
Stoke Newington: 1 to 8, Garden Villas, Woodville-road, 6, 7 and 8, Mayville-grove.
Islington: 2 and 3, Cumberland-street, 39 and 40, Market-street.
Crouch End: 44, Topsfield Parade.
Tottenham: 161 to 167 (odd), Harringay-road.
Hendon: 9 and 11, Bellevue-road.
Pinner: Roslyn, Royston Park-road.
Chiswick: 23 and 25, Reckitt-road.
Leytonstone: 69 and 71, Fillebrook-road.
Bow: 38 to 48 (even), Jodrell-road.
Plaistow: 34 to 46 (even), Suffolk-road.
East Dulwich: 48 and 50, Upland-road.
Stratford: 74, 76 and 78, Tavistock-road.
Bow: 12 and 14, Beale-road.
Forest Gate: 152, 154 and 270, Odessa-road.
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